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**PUBLIC VERSION**  
**BEFORE THE**  
**SURFACE TRANSPORTATION BOARD**

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STB Finance Docket No. 35130

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CENTRAL OREGON & PACIFIC RAILROAD, INC.—COOS BAY RAIL LINE

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**STATE OF OREGON'S REPLY TO RAILAMERICA AND CORP'S RESPONSE  
TO SHOW CAUSE ORDER**

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Appearing on behalf of the State of Oregon

**INTRODUCTION**

In response to the show cause order, RailAmerica and the Central Oregon & Pacific Railroad (“railroad”) argue that there are no grounds upon which the Board could reasonably find that the initial embargo of the Coos Bay Line and the continuing embargo to the present time are unreasonable, or that the railroad’s actions have amounted to an unlawful abandonment. The State of Oregon (State) disagrees

The initial embargo and the ongoing failure to provide service on the Coos Bay Line is an unlawful violation of the common carrier obligation to provide service upon reasonable request under 49 U.S.C. § 11101(a). The Board should order the railroad to repair tunnels 13, 15, and 18 and to restore service to the line.

The initial embargo was unreasonable. The railroad argues that the embargo was reasonable when commenced because the embargo was a response to “serious and well-documented safety concerns” relating to the condition of tunnels 13, 15, and 18 on the line. While there is clearly a safety issue with tunnels 13, 15, and 18, the safety issue was caused by the railroad’s neglect, not by any sudden or unexpected event such as a landslide or other collapse. The railroad knew of the deteriorating condition of the line and tunnels long before the “emergency” embargo but failed to make repairs. It is the railroad’s obligation as a common carrier to undertake the maintenance and repairs required to avoid problems and keep this line in a safe operating condition. The Board should not allow the railroad to use its own neglect to justify an embargo. Otherwise, railroads will have no incentive to maintain rail lines in a safe operating condition.

Even if the initial embargo was reasonable, the railroad’s ongoing choice to maintain the embargo is not reasonable and effectively amounts to an abandonment without prior approval. It is undisputed that the cost to repair the three tunnels and to

restore service to the line is \$2.9 million and it will take four months to complete repairs. CORP has the \$29 million needed to finance repairs, but CORP has no intent to do so.

The railroad contends that its embargo has remained reasonable at all times. First, the railroad claims that it has always intended to repair the tunnels. Second, the railroad argues that the length of the embargo is reasonable because Oregon's rainy season prevented it from making repairs. Third, the railroad argues that its financial condition does not permit it to repair the tunnels because the cost of repair "cannot be economically justified." Finally, the railroad states that it *may* seek authority to abandon the line. The railroad is willing, however, to repair the line and restore services, rather than to formally abandon the line, *but only if* the other interested stakeholders will agree to fund a major \$23 million upgrade to the line proposed by the railroad.

The railroad's actions do not make the ongoing embargo reasonable. The rain did not prevent the railroad from making repairs. Rail lines are repaired in inclement weather conditions, including rain. The railroad never had any intent to make the repairs—not unless the State, the shippers, and the Port of Coos Bay first agreed to pay for a long-term \$23 million upgrade of the line, which includes the cost of repairs and a guaranteed profit subsidy for the railroad. While the railroad can seek voluntary financial participation from others, it cannot choose not to provide service by an embargo as a tactic to avoid its common carrier obligations.

The fact that the railroad may seek authority to abandon the line in the future should not alter the outcome of this show cause proceeding before the Board. The railroad did not decide to abandon the line until *after* the Board issued its show cause order. Until its application to abandon the line is approved by the Board (if it is approved), the railroad still has common carrier obligations to provide service.

Accordingly, the Board should order the railroad to make the repairs to tunnels 13, 15, and 18 and to restore service to the Coos Bay Line.

### **BACKGROUND**

By order of April 11, 2008, the Board has ordered the railroad to show cause as to why the railroad's ongoing failure to repair tunnels and restore services to the Coos Bay Line does not constitute an unlawful abandonment, and why the Board should not order the railroad to either repair the tunnels and resume service or seek abandonment authority

The background facts are generally set forth in the Board's order. The line is 133 miles long and runs from Milepost 652 11 at Danebo to Milepost 785 50 near Coquille, Oregon. The line is operated by CORP, a subsidiary of RailAmerica that was acquired in 2000. RailAmerica was in turn acquired by Fortress Investment Group in February 2007.

In late 2006, one of the tunnels on the line collapsed during repairs. Subsequently, the railroad hired consultants to study all nine of the tunnels on the line. Following the release of the consultants' report, the railroad decided to shut down the Coos Bay Line for safety reasons. On November 8, 2007, the Federal Railroad Administration (FRA) issued a report based on its own investigations that concurred with the consultants' assessment of the tunnels at issue.

On September 21, 2007, the railroad issued an embargo on the line, citing solely the "[u]nsafe conditions in Tunnels 13, 15, and 18." In a press release issued by RailAmerica describing the embargo, a representative of CORP is quoted as stating, "The Coos Bay line just doesn't have enough business on it today to justify us making the

repairs”<sup>1</sup> The press release went on to indicate that the line could be reopened to support a container terminal at Coos Bay should such a terminal be developed

The Board found that, following the embargo, shippers dependent on the line were immediately impacted. According to press reports, Georgia Pacific’s Coos Bay sawmill laid off 120 workers for over 2 weeks. And, as reported in *The Register-Guard*, five companies that rely on the line are being required to absorb increased transportation costs ranging from 10 to 15% because they must use trucks rather than the railroad.<sup>2</sup> The railroad has not offered the shippers any alternate service routes nor offered to fully compensate the affected shippers for the increased transportation costs while the embargo remains in effect.<sup>3</sup>

In November 2007, the railroad presented a proposal to potentially interested parties for financing repair work on the line.<sup>4</sup> The railroad projected that it would cost approximately \$2.9 million and it would take 4 months to repair tunnels 13, 15, and 18 in order to reopen the line.<sup>5</sup> The railroad, however, contemplated doing other work as well before CORP would again begin service. Thus, the entire proposal contemplated spending over \$23 million “to restore [the] line to status quo,” and included proposed contributions of \$4.66 million apiece from CORP, the State of Oregon, the Port of Coos Bay, shippers on the Line, and the Union Pacific Railroad Company (UP), CORP’s connecting rail carrier

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<sup>1</sup> *Show Cause Order (Order)* at 2

<sup>2</sup> *Id*

<sup>3</sup> See Verified Statements of Ray Barbee and Fred Jacquot filed by shippers.

<sup>4</sup> State’s Reply, Ex. 1

<sup>5</sup> The nine tunnels on the Coos Bay Line are numbered consecutively from 13 to 21

On December 22, 2007, the railroad placed an advertisement in the Coos Bay World newspaper that stated, “The Coos Bay rail line is closed for now, but we plan to reopen it one day.”<sup>6</sup> In January of this year, the railroad provided a slightly modified version of its original proposal, which again included individual outside contributions of approximately \$4.66 million from each of the proposed contributors.<sup>7</sup> On several occasions, Oregon Governor Ted Kulongoski stated that Oregon would not provide funding until CORP makes a good faith gesture by repairing tunnels 13, 15, and 18 and reinstating service on the line.<sup>8</sup> In April of this year, the railroad provided another modified proposal, this time suggesting that the State pay the entire \$23 million proposed for a long term upgrade of the line in exchange for an equity interest.<sup>9</sup> The Governor again repeated, for the third time, that Oregon would not consider provide funding until the railroad complied with its common carrier obligation by repairing tunnels 13, 15, and 18 and reinstating service on the line.<sup>10</sup> None of the other prospective contributors have agreed to the railroad’s funding proposal.

**DISCUSSION**

**I. Standard on Review**

Under 49 U.S.C. § 11101(a), rail carriers have an obligation to provide rail service upon reasonable request. That obligation is not absolute, *Chicago & North Western Transportation Co v Kalo Brick & Tile Co.*, 450 U.S 311, 325 (1981), and may

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<sup>6</sup> Order at 2.

<sup>7</sup> *Id*

<sup>8</sup> *Id*

<sup>9</sup> State’s Reply, Ex 2.

<sup>10</sup> *Id*, Ex 3

be temporarily suspended if the rail carrier is incapable of providing service. Such incapacity may arise from physical conditions affecting safety such as weather and flood damage, tunnel deterioration, or operating restrictions due to congestion. *Bar Ale, Inc v California Northern Railroad Co and Southern Pacific Transportation Company*, STB Finance Docket No. 32821, slip op. at 6 (STB served July 20, 2001) (*Bar Ale*)

An embargo is a notification to the railroad industry and affected shippers that, in the carrier's opinion, a disability exists that temporarily prevents it from providing service. An embargo, which is issued through the Association of American Railroads pursuant to Circular TD-1, does not require prior Board approval. *Bar Ale*, slip op. at 5. If justified, the embargo will temporarily relieve the carrier of its common carrier obligation. *Groome & Associates, Inc and Lee K Groome v Greenville County Economic Development Corporation*, STB Docket No. 42087, slip op. at 11 (STB served July 27, 2005) (*Groome*).

But the railroad is not given a free pass to choose not to serve just because of circumstances that make it difficult or expensive to provide service. In order for a cessation of service to be lawful, an embargo must be reasonable at the time it is issued, and the carrier's ongoing choice to maintain the embargo must continue to be reasonable as well. *Decatur County Commissioners, et al v The Central Railroad Company of Indiana*, STB Finance Docket No. 33386, slip op. at 19 (STB served Sept. 29, 2000), *aff'd sub nom Decatur County Comm'rs v STB*, 308 F 3d 710 (7th Cir 2002), *GS Roofing Prods Co v STB*, 143 F 3d 387, 392 (8<sup>th</sup> Cir 1998). Although a valid embargo temporarily excuses the duty to provide service, it does not permanently eliminate the common carrier obligation under 49 U.S.C § 11101(a) *Bar Ale*, slip op. at 5. To be relieved of the common carrier obligation, a railroad must seek discontinuance or

abandonment authorization under 49 U.S.C. § 10903. *Id.* An embargo cannot be used by a railroad to “unilaterally abandon or discontinue service on a line at its own election ”

*Id.*

Thus, an embargo that extends beyond a reasonable time can be construed as an unlawful abandonment *Groome*, slip op. at 11. If a carrier is not going to repair a line over which service is requested within a reasonable time, it must initiate action to obtain abandonment or discontinuance authority. *Id.* at 5

When determining whether a failure to serve is reasonable, as well as how long the failure to serve may reasonably continue, the Board typically balances the following factors: (1) the cost of repairs necessary to restore service; (2) the amount of traffic on the line, (3) the carrier's intent; (4) the length of the service cessation; and (5) the financial condition of the carrier. *Id.* at 12. The factors are not applied in a formulaic way *Id.* Rather, the objective is to determine whether the carrier's decision to cease service on the line was reasonable considering the circumstances, and whether the carrier's decision to continue failing to serve is reasonable as well. *Id.*

**II. The embargo was unreasonable from its inception.**

As noted above, the State does not take issue with the railroad's conclusion that the conditions of tunnels 13, 15, and 18 on its Coos Bay Line are unsafe nor its decision to cease service. However, because the unsafe conditions in tunnels 13, 15, and 18 were caused by the railroad's neglect, and because the railroad was aware of the conditions precipitating the embargo for months prior to the embargo, its decision to cease service on the line is not properly characterized as the “emergency measure” of an “embargo,” but is properly classified as an unlawful abandonment

The circumstances presented in this case are similar to those presented in *ICC v. Chicago and North Western Transportation Co., et al.*<sup>11</sup> in which the Eighth Circuit Court of Appeals affirmed the federal district court's conclusion that an embargo imposed by the Chicago and Northwestern Transportation Company ("North Western") was an unlawful abandonment. In *ICC v. Chicago and North Western Transportation Co., et al.*, North Western embargoed the "Roland Line," a thirty-mile branch line in Central Iowa. North Western embargoed the line in response to its central division manager's request, which the manager based on his conclusion that the line was impassable and unsafe for rail traffic and that North Western had allocated inadequate funds for the maintenance and improvement of the line.<sup>12</sup> Approximately one year after declaring the embargo, North Western asked the Interstate Commerce Commission ("ICC") for authority to abandon the Roland line.<sup>13</sup>

After North Western asked the ICC for authority to abandon the Roland line, the ICC filed a complaint in federal district court seeking a preliminary and permanent injunction against North Western.<sup>14</sup> The ICC asked the federal district court to order the railroad to repair and operate the Roland Line and to enjoin the railroad from abandoning it.<sup>15</sup>

The district court concluded that a cessation of operations caused by factors beyond the railroad's control would not give rise to an abandonment, but that "[a]n abandonment should not be deemed beyond the control of the railroad if the unsafe track

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<sup>11</sup> 533 F.2d 1025 (1976)

<sup>12</sup> *Id.* at 1027.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 1026-27

<sup>15</sup> *Id.* at 1026

conditions that required cessation of service were caused by neglect of the railroad to properly maintain its rail line.”<sup>16</sup> The court found that the unsafe track conditions requiring cessation of service were caused by North Western’s failure to provide proper maintenance, rejecting the railroad’s assertion “that the antiquated nature of the line, combined with adverse weather conditions, made the stoppage unavoidable.” Instead, the court noted that “the evidence strongly indicates that the Roland line was deemed to be unprofitable by railroad management, and hence has not received proper maintenance for a number of years. This neglect was a prime factor in causing the deterioration which has made the line largely impassable.”<sup>17</sup>

The court found that considering the absence of any attempt by North Western to repair the line pending the outcome of the abandonment proceeding, the railroad had discontinued service with the intent to do so indefinitely or permanently and had thus unlawfully abandoned the line.<sup>18</sup> On appeal, the 8<sup>th</sup> Circuit Court affirmed the district court’s conclusions regarding the unlawful abandonment.<sup>19</sup>

Similarly in this case, the unsafe track conditions precipitating the embargo are due to the neglect of the railroad. As discussed *infra*, CORP and RailAmerica were aware of the conditions in tunnels 13, 15, and 18 for many months prior to the date the railroad imposed the embargo, if not many years. However, CORP and RailAmerica did not address the conditions and instead allowed the tunnels to deteriorate to the point that they were unsafe for rail traffic.

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<sup>16</sup> *ICC v Chicago and North Western Transportation Company, et al*, 407 F Supp. 827, 830-31 (S D Iowa 1974).

<sup>17</sup> *Id*

<sup>18</sup> *Id*

<sup>19</sup> *Id* at 1028

Evidence that RailAmerica/CORP knew of the deteriorated conditions in tunnels 15 and 18 well in advance of the decision to embargo the line is found in the RailAmerica/CORP response submitted to the Board on May 12, 2008; specifically, in a letter written by a Senior Vice President of Shannon & Wilson to the Chief Engineer of Rail America on September 21, 2007. In the letter, Mr. Robinson of Shannon & Wilson reiterates some of the findings of the July 2007 Shannon & Wilson report that the tunnels are in various states of deterioration and that three of the tunnels require immediate rehabilitation. Mr. Robinson also notes:

Some of the areas – particularly in Tunnel 15 and Tunnel 18, were identified and discussed with you as early as November 2006, when emergency repairs were initiated in Tunnel 15.<sup>20</sup>

Correspondence from CORP employees to Oregon Department of Transportation (“ODOT”) employees and other documents also establish that the railroad was aware, or should have been aware, of the deteriorated conditions in tunnels 13, 15, and 18 well before fall of 2007. An internal e-mail from the Federal Railroad Administration (FRA) discusses a joint inspection of Tunnel 15 by ODOT, CORP and the FRA on October 24, 2006.<sup>21</sup> The e-mail reflects that the inspectors noted deteriorated conditions in Tunnel 15, including (1) a failure of 4 or 5 timber arch rings, allowing significant amount of stone to fall into the tunnel; (2) a concentrated area of active, very recent movement of the timber liner; (3) a ten foot (plus or minus) section of the west wall that was bulging; and (4) several areas where the timber arch rings and planking were extremely rotted due

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<sup>20</sup> Verified Statement of Paul Lundberg, exhibit 6 at p 12; September 21, 2007 letter to Marc Bader from Robert A. Robinson.

<sup>21</sup> State’s Reply, Ex. 8.

to water damage.<sup>22</sup> The e-mail reflects that one of the FRA inspectors had also inspected Tunnel 15 in October 2005, and had found serious problems at that time, which he had discussed with RailAmerica's chief engineer, Mark Bader at the time of the 2005 inspection<sup>23</sup>

In response to the October 2006 FRA inspection, the railroad closed Tunnel 15 for repairs, but apparently only addressed only some of the conditions noted during the October 2006 joint inspection. Most notably, CORP/RailAmerica did not address the several areas where the timber arch rings and planking were extremely rotted because these are the conditions that Shannon & Wilson described in Tunnel Inventory Report as requiring repair within 6 months, and upon which CORP/RailAmerica based its decision to embargo the line.

Correspondence from the railroad to ODOT also establishes the railroad experienced problems with tunnel 18 well before the fall of 2007. An e-mail by a CORP employee to an ODOT employee reflects that in January 2007, the railroad initiated some repairs in tunnel 18 because of "some timbers that [were] strapping because the blocking toe has failed on five timber sets[.]"<sup>24</sup>

Furthermore, a grant application prepared by CORP reflects that CORP knew of the deteriorated conditions in tunnels 13 and 18 prior to the time the railroad declared an embargo of the line. In March 2006, CORP submitted an application for \$7,353,762.00 of *ConnectOregon I* funds to do various repairs and upgrades on its Oregon track. In the

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<sup>22</sup> State's Reply, Ex. 8

<sup>23</sup> State's Reply, Ex. 9.

<sup>24</sup> State's Reply, Ex. 9.

application, CORP noted that repairs to the tunnel lining in tunnels 13 and 18 on the Coos Bay Line were some of the highest priority repairs <sup>25</sup>

Similarly, in October 25, 2007 testimony to the Oregon Joint House and Senate Transportation Committee Bob Jones of RailAmerica informed the committee that RailAmerica had considered a low-interest federal loan to pay for repairs to the Coos Bay Line. Mr Jones testified that RailAmerica had an application for a federal low interest loan "on the books ready to go," but that RailAmerica's previous CEO was not interested in entering into the final contractual agreement Mr Jones further notes that the "CEO and Board saw opportunity to sell the property [to Fortress]," so "when we went to put together our capital budget in 2006 for 2007, a year ago, that's when I was told no."<sup>26</sup>

Notwithstanding CORP/RailAmerica's awareness of the deteriorated conditions in tunnels 13, 15, and 18, and the need for repairs, CORP/RailAmerica did not undertake all the needed repairs for these tunnels. The Board should not allow CORP/RailAmerica to use their failure to timely address the conditions in tunnels 13, 15, and 18 as an excuse to embargo the line and as a mechanism to escape their common carrier obligation to provide rail service.

CORP/RailAmerica recognize that whether they allowed the line to deteriorate to a non-operable condition is a factor the Board will consider in determining whether the embargo is a reasonable one.<sup>27</sup> The railroad argues that it has not been negligent in maintaining the line because it has "invested substantial sums for both ordinary

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<sup>25</sup> State's Reply, Ex. 4 at 8.

<sup>26</sup> Verified Statement of Kelly Taylor at 3

<sup>27</sup> RailAmerica/CORP Response at 10

maintenance of the Coos Bay Line and to address problems in a tunnel on the line”<sup>28</sup> In support of this assertion, the railroad describes the percentage of gross revenues from the Coos Bay Line that the railroad has spent to maintain the line. The railroad’s assertions that they have adequately maintained the line are not well taken for several reasons.

First, the metric the railroad has chosen to show they have not been negligent, the percentage of gross revenues from the Coos Bay Line spent on maintenance, is meaningless without some information about the amount of money that might be necessary to adequately maintain the line. Second, the railroad’s assertion that spending a certain percentage of gross revenues is adequate to maintain the line is belied by the fact that the conditions in three of the tunnels on the Coos Bay line are so deteriorated that the line is unsafe for rail traffic.

Finally, CORP/RailAmerica’s assertion that it has spent sufficient money in the last several years on maintenance is undercut by actions taken by the FRA. After a series of track inspections on all CORP’s subdivisions, the FRA concluded that it was necessary to enter into a Compliance Agreement to address repeated noncompliant track conditions such as center cracked angle bars in rail joints, loose frog bolts in switches and defective rail<sup>29</sup> The FRA employee recommending that CORP be subject to a compliance agreement noted, “the CORP has limited resources to maintain and repair their track to the class at which it is posted.”<sup>30</sup> CORP and the FRA executed the agreement in early 2006

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<sup>28</sup> RailAmerica/CORP Response at 11-12

<sup>29</sup> State’s Reply, Ex. 6.

<sup>30</sup> State’s Reply, Ex. 6.

**III. The continued embargo is not reasonable.**

Even if CORP's embargo of the line were reasonable when imposed, it has gone on for so long that it has become an unlawful abandonment

RailAmerica/CORP argues that the embargo has continued to be reasonable. It contends that it has always intended to restore services, and not to unlawfully abandon the line. It also argues that the length of the embargo is reasonable, and that its financial condition does not permit it to repair tunnels 13, 15 and 18, because it does not receive sufficient profit to make the repairs worthwhile.<sup>31</sup> The railroad's arguments have no merit and should be rejected by the Board.

**A. CORP does not intend to restore service to the Coos Bay Line.**

CORP does not intend to repair the line and restore services, even though CORP can financially do so, and the repairs can be completed quickly.

CORP argues that it has always intended to restore services to the line. The Board reached a contrary conclusion in issuing its show cause order. The railroad does not rebut or address any of the findings of the Board.

As found in the show cause order, the tunnel conditions that precipitated the embargo on September 21, 2007 did not arise from any sudden or unexpected event such as a landslide or other collapse. The slow deterioration of the tunnels' support structures— a decay that both RailAmerica and CORP had every opportunity to observe during the eight years that they owned and operated the line—eventually resulted in the condition that was used to justify the embargo.<sup>32</sup> The Board found that the fact that the

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<sup>31</sup> RailAmerica/CORP's Response at 10-27

<sup>32</sup> CORP has had the opportunity to observe the deterioration of these tunnels since 1994, when it purchased the line

condition used to justify the embargo did not arise from any event that could not have been anticipated or any suddenly perceived latent defect is demonstrated by both the S & W report and the FRA report. The railroad does not challenge the Board's finding.

The Board also found that the railroad never had any intent to make repairs with its own funds. On the same day that the embargo was announced, the railroad stated in a press release that to repair the tunnels on the line would cost \$7 million and that the railroad would seek a "public-private partnership" to fund the repairs. *Order* at 4. Thus, the railroad was not caught off guard by the need to close the tunnels and embargo the line. And the reference to a "public-private partnership" in this press release indicates that the railroad had already determined that it would not repair the line without a significant contribution of public funds. *Id.*

The Board found that the inference that the railroad does not intend to repair the line with its own funds is also supported by what occurred at a meeting that RailAmerica held with representatives of the State of Oregon and the Port of Coos Bay on November 14, 2007. In a 13-page briefing paper distributed shortly thereafter, RailAmerica candidly stated that "The deteriorated physical plant on the Coos Bay Line of the CORP is the result of many years of use and little funding to invest in the line."<sup>33</sup> In the briefing paper, RailAmerica stated that it has "new management" since it was acquired by Fortress Investment Group in February of 2007. RailAmerica also stated that the line "has operated at a significant deficit," that "traffic is declining," that the line "does not justify reinvestment," and, specifically, that the "Coos Bay line currently

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<sup>33</sup> State's Reply, Ex. 1 at 2.

operates at an annual deficit of approximately \$1,500,000, making operations and future capital expenditures unsustainable.” *Id.*

The Board also noted that the railroad’s briefing paper spelled out the railroad’s year-long review of the nine tunnels on the line, the problems in the tunnels revealed by a series of inspections, and the steps leading up to the issuance of the embargo on September 21, 2007. The Board found that the briefing paper indicates that the railroad has no intention of investing substantial funds to rehabilitate the line “until substantial financial commitments from several other entities are obtained.” *Order* at 4. The railroad’s briefing paper documents \$23 million in capital investment that would be needed to restore the Coos Bay Line to a condition that the railroad deems serviceable in the long term. The specific cost to “stabilize tunnels 13, 15 and 18 to reopen the line” would be \$2.9 million. Also included, however, are expenditures for tie replacement, surfacing, tunnel liner repairs, bridge repairs, and tunnel drainage. To fund all of this, RailAmerica proposed that \$4.66 million each be contributed by CORP, the Oregon Department of Transportation, the Port of Coos Bay, the shippers on the Coos Bay Line, and Union Pacific Railroad (UP). In addition, the railroad requested \$2 million per year over a 5 year period as an “ongoing subsidy” for its operating costs and profits.

The Board noted that the State promptly rejected the funding proposal in January of 2008. After hearing the proposal, Governor Ted Kulongoski reacted on January 24, 2008, stating that the railroad should first repair the tunnels, lift the embargo and reopen the line for rail service. At that point, the State of Oregon would be willing to work with RailAmerica to solve the long term maintenance and safety problems. The Governor added that the State would need an equity interest in the line in connection with any state investment. The State has thus made it clear that before the State would commit

substantial funds, it wanted a showing of good faith participation by the railroad. The railroad's response to the Governor on February 4, 2008 was a mirror image of the Governor's letter, stating that before it would repair the tunnels, it needed a "public commitment" from the State for the funds necessary to make the "second phase" of the repairs. The Governor responded to the railroad's reply on February 12, 2008. In his statement, the Governor reiterated exactly what he had said in his previous statement that the State would make no financial commitment until the railroad repaired the tunnels and resumed service. On February 20, 2008, a group of shippers on the line endorsed the Governor's position. The shippers believed that repair of the tunnels should begin by April 1, 2008, more than 6 months after the embargo began. *Order at 5*. In April of this year, the Governor reiterated his position for yet a third time. The railroad does not dispute or address the Board's findings.

Based on the above facts, the Board found that the railroad cannot be in any doubt that the commitment to public and shipper funding--which it has repeatedly said are preconditions to repairing the tunnels--will not be forthcoming until the tunnels are repaired. The Board found that the railroad has no intention of fixing the tunnels at its own expense at this time.

In response, the railroad argues that it has always intended to repair the line, not to effect an unlawful abandonment. RailAmerica/CORP argues that its intent to repair is evidenced by (1) its "repeated efforts over the last several months to solicit the participation of other stakeholders" in a long-term funding arrangement, (2) its "consistent level of expenditures to maintain the line," and, (3) its "prompt repair of the

damage caused by the collapse of Tunnel No 15 in November 2006.”<sup>34</sup> None of these facts show that the railroad ever intended to fix the tunnels at its own expense.

First, the fact that RailAmerica/CORP continues to send letters demanding a public-private funding partnership before it will repair the tunnels does not relieve it of its common carrier obligation to repair and reopen the line. See *Groome*, slip op at 12 (finding embargo became unreasonable once “it was or should have been apparent” to the carrier that its “plans for funding and operating the line would not succeed.”) Otherwise, a railroad would be able to continually avoid its common carrier obligations to reopen a line by sending letters requesting a public-private partnership to fund repairs.

Second, RailAmerica/CORP’s argument that its “consistent level of expenditures” to maintain the line shows it always intended to repair tunnels 13, 15, and 18 is not well taken. In addition to the reasons discussed above, the railroad’s assertion is not supported by its own briefing papers.<sup>35</sup> According to the railroad, the current problem is caused by “many years of use” and “little funding” invested in the Coos Bay Line. Its briefing paper reported annual traffic and expenditures on the line. In 2000, the year RailAmerica acquired CORP, there were 6,431 cars moved on the line. There were 5,982 in 2001, 8,376 cars in 2002, 9,039 cars in 2003, 5,549 cars in 2004, 6,247 cars in 2005, 5,845 cars in 2006, and 3,652 cars in 2007, the year of the embargo. During this period, the railroad spent the following on capital expenditures: \$199,653 in 2002, \$302,242 in 2003, and

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<sup>34</sup> RailAmerica/CORP’s Response at 10-17

<sup>35</sup> The Board should accord no weight to the railroad’s allegations regarding gross annual revenues, traffic, and annual operating and maintenance costs for the line. See Verified Statement of Paul Lundberg at 3-4. This information is not corroborated through reference to financial documents or through information provided to the parties in discovery.

\$191,522 in 2004.<sup>36</sup> By 2005 and 2006, the problems caused by deferred maintenance became acute, causing the railroad to make capital expenditures of \$1.1 million in 2005 and \$1.8 million in 2006, which included \$1.7 million to repair the collapse of tunnel 15 during repairs, forcing a 3 month closure of the tunnel and resulting in \$500,000 in lost revenue.<sup>37</sup>

The railroad has not provided any documents to show its annual gross revenues from traffic on the line.<sup>38</sup> But the railroad does claim that the line was “profitable” in 2002 and 2003.<sup>39</sup> In 2002, the line moved 8376 cars. At approximately \$\_\_\_ per car, the gross annual revenue from traffic would be about \$5.1 million. During 2002, the railroad spent \$199,653 in capital expenditures, or about 4% of its estimated gross traffic revenues. Similarly, in 2003, the line moved 9,039 cars, resulting in approximately \$5.5 million in gross traffic revenue, without including other sources of revenue. During 2003, the line spent \$302,242 in capital expenditures, or about 6% of its estimated annual gross traffic revenues. These figures do not support the railroad’s assertion that it has spent “28% of its annual gross freight revenues earned on traffic” for maintenance of the line.<sup>40</sup>

The problems that caused the embargo are the result of “many years of use” and “little funding” invested by the railroad to maintain the line. The FRA has historically

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<sup>36</sup> State’s Reply, Ex. 1 at 13.

<sup>37</sup> *Id.* and at 3

<sup>38</sup> The railroad alleges it receives from UP a “Handling Carrier Charge” of \$\_\_\_ to \$\_\_\_ per car, adjusted upwards annually subject to a 3% cap, and a fuel adjustment of \_\_\_% of the carrier charge, or approximately \$\_\_\_ to \$\_\_\_ per car. Verified Statement of Paul Lundberg at 3-4. That equals approximately \$\_\_\_ per car.

<sup>39</sup> Verified Statement of Paul Lundberg at 5

<sup>40</sup> *Id.*

had to take actions against CORP due to repeated noncompliant track conditions. The amount of funds that the railroad has spent on maintenance of the line does not support its professed intent to make repairs to tunnels 13, 15, and 18 with its own funds following the embargo.

Nor does the railroad's repair of tunnel 15 in 2006 suggest that it intended to repair tunnels 13, 15 and 18 with its own funds in 2007. The railroad did not adequately repair tunnel 15 in 2006, since tunnel 15 is one of the tunnels whose failure the railroad used to justify the embargo in 2007. Moreover, the railroad did not seek a "public-private partnership" to pay for the cost of repairs to the line in 2005 or 2006. This issue arose in 2007, only after the Fortress Investment Group, a hedge fund, acquired RailAmerica and appointed new management. Now, the railroad argues that the continued embargo is reasonable and will remain reasonable until the State, the Port of Coos Bay, and the affected shippers commit to a "public-private partnership" to finance a \$23 million upgrade of the line, including the cost to repair the three tunnels, along with providing an annual \$2 million public subsidy for operating costs and profits. However, the railroad's common carrier obligation did not cease or change when the railroad was acquired by a hedge fund. The common carrier obligation includes the obligation to maintain infrastructure in a condition that allows service to be provided, and failure to do so is a violation of the common carrier obligation. A railroad "cannot lawfully make [providing service] contingent upon whether [it] thinks it is 'worth it' to do so."<sup>41</sup>

In short, CORP/RailAmerica had already made the decision that it would not pay the cost of repair with its own funds when the embargo was first announced, as indicated

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<sup>41</sup> *Pejepscot Industrial Park, Inc., d/b/a Grimmel Industries- Petition for Declaratory Order*, STB Docket No. 33989, slip op. at 6 (served May 15, 2003) (*Pejepscot*)

in the press release and the briefing papers provided to the interested parties. The railroad has never intended to make the repairs with its own funds.

**B. The length of the embargo has become unreasonable.**

The embargo has been in place for over 7 months now, and shippers on the line do seek the resumption of service. The Board found that there was no reason for the railroad to delay either restoring the tunnels and providing service, or, if CORP does not want to serve the line anymore, to seek relief from the obligation to provide service. As the Board noted, railroads may look for creative ways, including public/private partnerships, to maintain or upgrade their facilities, and the railroad was entitled to wait a reasonable period for a reaction to its funding proposal. However, a railroad must, within a reasonable time, either provide service or take steps to be relieved of the common carrier obligation.

In response, the railroad argues that the length of the embargo is reasonable, because it has “diligently attempted” to forge a partnership to get other interested parties to pay for a \$23 million upgrade of the line, and the \$2.9 million in repairs immediately needed to tunnels 13, 15 and 18 cannot be made in any event due to “weather conditions” in Oregon.<sup>42</sup>

The railroad’s arguments are not well taken. The common carrier obligation includes the implicit obligation to repair and maintain rail lines to provide safe service. The railroad has the obligation to pay for the cost of maintenance and repairs to its rail line, not the public it serves. Repairs to rail lines are routinely made during adverse weather conditions, including rain. In its briefing paper, the railroad represented that the

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<sup>42</sup> RailAmerica/CORP’s Response at 20

\$29 million in repairs to tunnels 13, 15 and 18 could be commenced immediately by March 1, 2008, *but only if* the other interested parties first agreed to participate in the railroad's proposed \$23 million upgrade of the line, which included the cost of repair and a profit subsidy for the railroad.<sup>43</sup> This was not an acceptable response to the shippers' requests for services. "A rail carrier cannot make its service contingent upon guaranteed profits from that service or upon the shipper's advance funding of repairs to the rail line over which the service would then be provided."<sup>44</sup>

In this case, the railroad has known for some time that a key aspect of its proposals—that the other parties commit to a financial contribution before the railroad repairs the tunnels and lifts the embargo—has been rejected by the various interests involved. While the railroad may be entitled to wait a reasonable period of time, that period is long passed here. In *Groome*, the Board held that GCEDC, a public entity that acquired a railroad with an embargoed line, had a common carrier obligation even though it had no intent to operate the line as a carrier. The Board found that GCEDC violated that obligation by failing to either restore services to the embargoed line or seek abandonment once it knew that its proposed funding plans to repair line would not succeed.<sup>45</sup> Here, from the outset, the railroad never intended to put the line back in serviceable conditions with its own funds. At least since January of 2008, it was or should have been apparent to the railroad that its plans for funding a proposed \$23 million upgrade of the line would not succeed. At that point, it was time for the railroad

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<sup>43</sup> State's Reply, Ex. 1 at 7 ("project start date will be when funding is established or March 1<sup>st</sup> due to weather, whichever is later")

<sup>44</sup> *Pejepscot*, slip op. at 6.

<sup>45</sup> *Groome*, slip op. at 12.

to seek an end to its obligation to provide service, and it was unreasonable for it to continue the embargo and not begin the discontinuance or abandonment process

Thus, the length of the embargo is not reasonable.

**C. RailAmerica/CORP can pay for the cost of repairs.**

RailAmerica/CORP argues that its financial condition prevents it from paying for the cost of repairs because the cost of repairs are not “financially justified based upon the financial prospects for the Coos Bay Line.” The railroad argues that the traffic on the line does not generate enough revenue to meet the costs of providing service, a condition which, according to the railroad, has existed for years and which is worsening due to declining traffic volume. The railroad claims that this line operated at a profit in 2002 and 2003, but that the line began operating at a deficit in 2005 and 2006 due to decreased traffic and increased expenses <sup>46</sup>

As discussed above, according to the railroad’s briefing paper for the State, in 2000, the year RailAmerica purchased CORP, there were 6,431 carloads on the line. There were 5,982 carloads in 2001, 8,376 carloads in 2002, 9,030 carloads in 2003, 5,849 carloads in 2004, 6,247 carloads in 2005, and 5,845 carloads in 2006. The number of carloads decreased to 3,652 in 2007 but that is the year the railroad embargoed the line. Thus, the average number of cars per year on the line from 2000 to 2006, the last full year of service, was 6890, which is an *increase*, not a *decrease*, from the 6,431 carloads per year at the time RailAmerica purchased the line.

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<sup>46</sup> RailAmerica/CORP’s Response at 21-24

The railroad's figures do not show decreased traffic after 2004, other than the year of the embargo. There were 5,849 cars in 2004, 6,247 cars in 2005, and 5,845 cars in 2006. Thus, traffic in 2005 and 2006 was the same or greater than in 2004, a year that the railroad alleges was profitable. Any deficit complained of by the railroad as a result of increased expenses in 2005 and 2006 is in large part due to the railroad's neglect in failing to maintain the line—\$1.1 million in capital expenditures in 2005 and \$1.8 million in 2006, which includes \$1.7 million to repair tunnel 15 when it collapsed during repairs. A railroad cannot milk a line for profits, failing to invest in proper maintenance and repair, and then use its own neglect to justify an embargo.

CORP also argues that "it does not have the ability to take pricing actions that would generate additional revenues for upgrading or expansion of its rail infrastructure," due to the terms of its Competitive Market Agreement with UP which limits the rates charged by CORP.<sup>47</sup> However, as UP has testified before this Board, the remedy for this is to "renegotiate the terms" of that Agreement, which UP and CORP "are doing right now."<sup>48</sup> Moreover, it is not appropriate for a railroad to use an embargo as a tactic to avoid its common carrier obligation and to force the public to pay for the railroad's desired upgrade and to guaranty profits on the line, which is what has happened here.

In any event, even if the railroad can prove that it is operating the line at an annual deficit, and that the present problems are not caused by the railroad's own neglect in

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<sup>47</sup> Verified Statement of Paul Lundberg at 4; RailAmerica/CORP's Response at 22

<sup>48</sup> See Testimony of J. Michael Hemmer of UP in Ex Parte 677, STB *Common Carrier Obligation of Railroads* hearing, April 25, 2008, transcript at page 116, lines 5 to 8 ("Now the solution to that, of course, is renegotiation of those terms and conditions, and that is what we're doing now.")

failing to maintain the line, that does not make the ongoing embargo reasonable. A carrier is not given a free pass to choose not to serve just because of circumstances that make it difficult or expensive to provide service. In order for a cessation of service to be lawful, an embargo must be reasonable at the time it is issued, and the carrier's ongoing choice to maintain the embargo must continue to be reasonable as well. *Decatur, supra*, 308 F.3d 710; *GS Roofing, supra*, 143 F.3d 387, 392. But "[a]n embargo cannot be used by a railroad to unilaterally abandon or discontinue service on a line at its own election," *Bar Ale*, slip op. at 5, as the railroad has done here.

The railroad argues that the Board has not required carriers to make expensive repairs when "the revenues from the line would not be enough to provide a return on that investment," citing *Decatur*.<sup>49</sup> *Decatur* is distinguishable. There, the Central RR Company of Indiana (CIND) placed an embargo on a 16 mile segment, due to mud slides and other problems, but continued to provide service to all shippers at a higher price along different routes. Three months after the embargo was issued, CIND filed a petition for exemption from STB regulation so CIND could abandon its entire 81 mile line, including the non-embargoed portion of the line.<sup>50</sup> CIND was then acquired by RailTex, who withdrew its petition for exemption and resumed operation of the entire line. In holding that a 20 month embargo was reasonable in length, the court found that CIND did not violate its common carrier obligation, in part because "less than three months elapsed" between the date the embargo became effective and the date CIND gave notice of its intent to abandon the line.<sup>51</sup> The court also found that CIND attempted to comply

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<sup>49</sup> RailAmerica/CORP's Response at 22.

<sup>50</sup> *Decatur*, 308 F.2d at 714

<sup>51</sup> *Id.* at 716

with its common carrier obligation during the 20 month period, because “CIND did not sit idle” until it filed the abandonment petition and “at no time was rail service unavailable to the affected shippers.”<sup>52</sup> The court held that “on this record, the Board did not permit CIND to use the embargo as a tactic to avoid CIND’s common carrier obligation.”

The same cannot be said here. Unlike in *Decatur*, the embargo was not caused by a sudden event like a mud slide, but by the railroad’s own failure to maintain the line. The railroad did not announce the embargo until September 21, 2007, two months after receiving the S & W report that was used to justify the embargo, and the railroad gave the affected shippers less than 24 hours notice of the embargo. Unlike *Decatur*, the railroad has been idle here, since the railroad has taken no action to commence repairs.<sup>53</sup> And, unlike *Decatur*, the railroad has not provided alternative service to the affected shippers during the embargo or fully compensated them for the increased cost of transportation. The railroad did not state any intent to abandon this line until May of 2008, nine months after the embargo was issued, and then only *after* the Board issued its show cause order. In fact, the railroad still does not intend to abandon the line, but only if the other interested parties will agree to finance the \$23 million upgrade of the line envisioned by the railroad – a substantial increase in the value of its asset, as well as a guaranteed profit, all at the public’s expense. But, “notions of long-term feasibility have no place in a proceeding to determine the reasonableness of an embargo.” *G S Roofing*, 143 F.3d at

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<sup>52</sup> *Id.* at 717.

<sup>53</sup> See testimony of Paul Lundberg of RailAmerica in Ex Parte 677, STB *Common Carrier Obligation of Railroads* hearing, April 25, 2008, transcript at page 172, line 19 to page 173, line 1 (admitting that RailAmerica and CORP have the cost estimates for the tunnel repairs, but “haven’t taken any further action”)

394 Here, the railroad has used the embargo, and is still using the embargo, as a tactic to avoid the railroad's common carrier obligation.

**D. The traffic on the line justifies restoring services.**

The railroad argues that the cost of tunnel repairs is not justified because decreased traffic on the line in 2005 and 2006 prevent it from earning sufficient revenues to pay for operating costs and get an adequate return on investments <sup>54</sup>

As discussed above, the amount of traffic on this line is sufficient to justify repairs. This line serves numerous shippers, and the revenue generated by traffic each year clearly exceeds the \$2.9 million cost of repairs. The gross traffic revenues from 6,247 cars in 2005 would be approximately \$3.8 million, and revenues from 5,845 cars in 2006 would be approximately \$3.6 million. In *Bar Ale*, the Board balanced the cost of repairs in relation to the amount of traffic generated by the affected shipper and the financial condition of the carriers. There, the repair of a bridge would have cost \$250,000, while "revenue from Bar Ale's traffic was only about \$28,400 a year." *Bar Ale*, slip op. at 6. The carriers were trying to sell the line for continued service and therefore failed to seek approval to discontinue service or abandon the line. The Board found the embargo was reasonable under these circumstances, because the carrier's "precarious financial condition" during the embargo was "well known," and the carrier could not afford the "substantial rehabilitation expense" during negotiations to sell the line "given the limited amount of traffic and revenue" derived from Bar Ale, the sole shipper served by the line. *Id.* That is not the case here. There is a substantial amount of traffic on the line and the estimated annual gross revenues generated by traffic exceed the

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<sup>54</sup> RailAmerica/CORP's Response at 25

\$2.9 million cost to repair tunnels 13, 15, and 18. The railroad has simply decided that it will not repair the line unless the State of Oregon, the shippers, and other stakeholders first agree to pay for the cost of repairs, a substantial upgrade to the line, and an annual profit subsidy for the railroad. Traffic on the line is sufficient to warrant repairs, and this factor weighs in favor of finding that the embargo has become unreasonable

**E. The railroad's financial condition does not justify the embargo.**

The railroad argues that its financial condition "does not permit it to make the needed repairs to Tunnels 13, 15 and 18 without financial assistance from other parties."<sup>55</sup> The railroad argues that undertaking the \$2.9 million in repairs "would have essentially rendered CORP's entire operation marginal." *Id.* The railroad does not offer any evidence to support the allegation that paying the cost of repairs would render CORP's entire operation "marginal." The annual report that CORP files with the Oregon Department of Transportation (ODOT) of the annual gross revenue for the CORP system in Oregon (i.e., the Roseburg, Coos Bay and Eugene Subdivisions) does not support this assertion. The annual gross revenue reported by the CORP system was \$22 million in 2002, \$23 million in 2003, \$23 million in 2004, \$30 million in 2005, \$27 million in 2006, and \$24 million in 2007, the year of the embargo.<sup>56</sup> CORP's annual gross revenues for 2005, 2006 and 2007, absent the embargo, were actually substantially higher than in prior years.

The railroad also argues that the Board should not require it to make the repairs to tunnels 13, 15 and 18, even if it clearly can afford to do so.<sup>57</sup> It argues that the fact that

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<sup>55</sup> RailAmerica/CORP's Response at 26.

<sup>56</sup> See Verified Statement of Kelly Taylor at 3

<sup>57</sup> RailAmerica/CORP's Response at 25

CORP is owned by RailAmerica, and that RailAmerica is in turn owned by Fortress Investment Group, a hedge fund, is irrelevant to the issues before the Board.<sup>58</sup>

The Board does not need to decide whether or not the financial condition of RailAmerica and Fortress Investment Group is relevant to the continued embargo CORP does have the \$2.9 million to pay for repairs, since CORP already announced that it could commit \$4.6 million to this repair project. Accordingly, CORP's financial condition does not make the continued embargo reasonable

**CONCLUSION**

Because RailAmerica and CORP have neither provided service nor been relieved of their obligation to provide service, the line's current status is that of an illegal abandonment Under the circumstances, RailAmerica/CORP should be ordered to repair tunnels 13, 15, and 18 and resume rail service on the line.

DATED this 3<sup>rd</sup> day of June, 2008

Respectfully submitted,

HARDY MYERS  
Attorney General

  
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<sup>58</sup> *Id.* n 12. RailAmerica/CORP offers no evidence regarding the financial condition of RailAmerica or Fortress Investment Group.

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the PUBLIC VERSION of STATE OF OREGON'S REPLY TO RAILAMERICA AND CORP'S RESPONSE TO SHOW CAUSE ORDER to be served by email and/or overnight delivery service this 3<sup>rd</sup> day of June, 2008 on the following:

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State of Oregon  
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Salem, OR 97301-4047

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And a HIGHLY CONFIDENTIAL VERSION of STATE OF OREGON'S REPLY TO RAILAMERICA AND CORP'S RESPONSE TO SHOW CAUSE ORDER to be served by email and/or overnight delivery service to counsel that has signed the Highly Confidential Undertaking pursuant to the Protective Order imposed on May 16, 2008

  
Stephanie Andrus

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No 35130**

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**CENTRAL OREGON & PACIFIC RAILROAD, INC. – COOS BAY RAIL LINE**

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**VERIFIED STATEMENT OF KELLY TAYLOR**

My name is Kelly Taylor. I am the Administrator of the Rail Division of the Oregon Department of Transportation. My business address is 555 13<sup>th</sup> Street, NE, Suite 3, Salem, Oregon 97301-4179. The Rail Division regulates railroads in Oregon as allowed by Oregon law and rule and is responsible for freight and passenger rail planning and operations, as well as for representing railroad customers on service issues.

On September 20, 2007, I received a phone call from Kevin Spradlin of Central Oregon and Pacific Railroad (“CORP”) to notify me that the railroad intended to issue notice of embargo of the entire Coos Bay Line the following day. Neither CORP nor RailAmerica provided notice prior to this phone call regarding their intent to embargo the Coos Bay Line.

On September 24, 2007, Bob Jones, the regional vice president of RailAmerica and Kevin Spradlin, CORP’s general manager, attended a previously-scheduled meeting of the Southern Oregon Transportation Working Group. In response to inquiries about when the Coos Bay Line would be repaired and reopened, Mr. Jones and Mr. Spradlin offered no information to show that the railroad had a plan to repair the conditions in Tunnels 13, 15 and 18, notwithstanding the fact the railroad had taken the extreme measure of stopping service on the line due to the condition of these tunnels.

It was not until mid-November 2007 that RailAmerica and CORP provided the State or other stakeholders with any specific proposal for re-opening the line, and that proposal came in the form of a “public-private partnership” in which the State and other

stakeholders would each contribute at least \$4.66 million to rehabilitate the entire Coos Bay Line, not just the conditions in the tunnels that precipitated the embargo. (See Exhibit 1 )

On January 22, 2008, CORP/RailAmerica presented the State of Oregon with a "Term Sheet" in which it again outlined a public-private partnership with the State of Oregon and other stakeholders. CORP/RailAmerica reiterated their proposal at a meeting with Oregon Governor Ted Kulongoski on January 24, 2008. The Governor rejected CORP/RailAmerica's proposal.

Approximately two months after the Governor rejected CORP/RailAmerica's proposal for a public-private partnership, RailAmerica submitted to the State of Oregon a proposal for a Joint Venture whereby the Oregon Department of Transportation would acquire an equity interest in the Coos Bay Line in exchange for funding the rehabilitation of the Coos Bay Line, which RailAmerica estimated would cost \$23.3 million. (See Exhibit 2 )

The Governor rejected this proposal in an April 21, 2008 letter to Paul Lundberg, noting that the "bottom line" he had announced during the January 24, 2008 meeting with CORP/RailAmerica and again in his February 12, 2008 letter to RailAmerica had not changed, and that he would only be open to discussing any long-term solution for the Coos Bay Line *after* CORP/RailAmerica had re-opened it. (See Exhibit 3 )

**ConnectOregon I Program and Railroad Rehabilitation and Improvement Financing Program**

In March 2006, CORP submitted an application to the *ConnectOregon I* Program for a grant to "upgrade the Central Oregon & Pacific main lines." The *ConnectOregon* Program is a Multimodal Transportation Fund to invest in air, rail, marine, and transit infrastructure. CORP asked for a grant of \$7,353,762.00 and proposed to match that amount with \$5,025,812.00 of its own funds. In the application, CORP asserted that repairs done with the *ConnectOregon I* funds would include the repair of the tunnel lining

in tunnels 13, 15 and 20 in the Coos Bay Subdivision, and reported that these repairs were some of the highest priority on the subdivision. (See Exhibit 4 at 8.) Ultimately competing applications submitted for ConnectOregon I funds were approved and CORP's application was not funded.

During his October 25, 2007, testimony to the Oregon Joint House and Senate Transportation Committee, Bob Jones of RailAmerica was asked whether RailAmerica had considered a low-interest federal loan to pay for repairs to the Coos Bay Line. Mr. Jones testified that RailAmerica had an application for a federal low interest loan "on the books ready to go," but that RailAmerica's previous CEO was not interested in entering into the final contractual agreement and that the "CEO and the Board saw opportunity to sell the property [to Fortress]," so "when we went to put together our capital budgets in 2006 for 2007, a year ago, that's when I was told no."

#### Annual Gross Revenue

I have reviewed statutorily-required Annual Reports filed by CORP in Oregon since 2002. Each report sets forth the railroad's total operating revenues. CORP reported its total operating revenues for years 2002 through 2007 as follows.

2002 -- \$22,221,597.00  
2003 -- \$23,677,963.00  
2004 -- \$23,630,153.00  
2005 -- \$30,027,001.00  
2006 -- \$27,563,027.00  
2007 -- \$24,415,684.00

#### **VERIFICATION**

I, Kelly Taylor, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

  
\_\_\_\_\_  
Kelly Taylor

Executed on the 3<sup>rd</sup> day of June, 2008

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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*STB Finance Docket No. 35130*

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**CENTRAL OREGON & PACIFIC RAILROAD, INC – COOS BAY RAIL LINE**

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**VERIFIED STATEMENT OF JOHN R. JOHNSON**

My name is John R. Johnson. I am the manager of the Rail Safety Section of the Oregon Department of Transportation, Rail Division. My business address is 555 13<sup>th</sup> Street, NE, Suite 3, Salem, Oregon 97301-4179. The Rail Safety Section inspects railroad tracks in Oregon for compliance with Oregon regulations. The Oregon Department of Transportation, Rail Division, Rail Safety Section also works in conjunction with the Federal Railroad Administration ("FRA") to inspect rail lines in Oregon for compliance with federal regulations.

In the course of my employment, I have received correspondence from Central Oregon and Pacific Railroad ("CORP") employees as well as FRA employees regarding all CORP's subdivisions in Oregon, including the Coos Bay Line.

In April 2005, I received a memorandum produced by FRA employee Steve Jasso describing a FRA team inspection on CORP's three Oregon subdivisions, including the Coos Bay Line (Exhibit 5). Mr. Jasso notes that the FRA had concerns regarding all CORP's subdivisions because of, among other things, "lack of resources for proper inspection and maintenance" (Exhibit 5 at 7). Mr. Jasso notes that CORP's general manager agreed with the FRA that CORP's track conditions, quality of inspections, and lack of proper remedial action needed to be improved and that the general manager "offered no excuses and stated headquarters in Texas might finally be waking up" (Exhibit 5 at 8).

In June 2005, I received another memorandum from the FRA concerning CORP's subdivisions in Oregon. (Exhibit 6.) In this memorandum, FRA Track Safety Inspector Rick Hasbrouck discusses a recent FRA inspection on CORP's Roseburg subdivision and reviews the conclusions of past FRA inspections on all Oregon's CORP's Oregon subdivisions. Mr Hasbrouk notes that "it is evident from past inspections that very little progress is being made when comparing the miles of track and defective conditions being discovered by FRA and ODOT inspectors." (Exhibit 6 at 2 ) In conclusion, Mr Hasbrouck recommends that "CORP be placed into a Compliance Agreement with stronger enforcement towards the noncompliant track and roadway worker protection conditions recording during the past inspections with more recommended civil penalty's and or individual liability enforcement and special notice for repairs placed where we continually find areas of track that cannot be maintained for the posted class of track that it is being operated at." (Exhibit 6 at 2 )

In January 2006, CORP and the FRA entered into a Safety Compliance Agreement as recommended by Mr Hasbrouck (Exhibit 7 ) The Safety Compliance Agreement notes that since 1998, FRA and State of Oregon inspectors have inspected the equivalent of about 1000 track miles on main and yard tracks and recorded more than 4,067 noncompliance track conditions. (Exhibit 7 at 1 ) The Agreement further notes that the FRA's recent assessment of the CORP's compliance with Federal Track Safety Standards regulations revealed "continued widespread noncompliance with [the] regulations, creating significant risk to the health and safety of the public and railroad employees " (Exhibit 7 at 1 )

In October 2006, I received an e-mail from FRA employee Steve Krause regarding an October 24, 2006 FRA inspection of Tunnel 15 on the Coos Bay Line (Exhibit 8 ) Mr Krause notes several defects in the tunnels, including (1) 4 or 5 timber arch rings in a row completely failed allowing timber planking and a significant amount of stone to fall into the tunnel, (2) a concentrated area of active, very recent movement of

the timber liner causing sections of the timber arch rings at the top of the tunnel to split from end to end and causing many of the arch ring timbers to shift and overlap or crush each other; (3) a failed section in a portion of the west wall that was bulging outward 6" to 12", and (4) several areas where timber arch rings are planking and severely rotted due to water damage (Exhibit 8 at 2 ) Mr Krause also notes that he had found serious problems in Tunnel 15 during an October 2005 inspection and that he had previously discussed those concerns with CORP officials (Exhibit 8 at 2 )

In January 2007, I reviewed an e-mail from Steve Hefley of CORP to another Rail Division employee regarding "problems" in Tunnel 18 The e-mail stated that there were timbers strapping because the blocking toe had failed on five timber sets." (Exhibit 9 )

#### **VERIFICATION**

I, John R Johnson, declare under penalty of perjury that the foregoing is true and correct Further, I certify that I am qualified and authorized to file this verified statement

  
\_\_\_\_\_  
John R. Johnson

Executed on the 3<sup>rd</sup> day of June, 2008

# Central Oregon & Pacific Railroad Partnership for Coos Bay Line

November 14, 2007



**The deteriorated physical plant on the Coos Bay Line of the CORP is the result of many years of use and little funding to invest in the line.**

- **Originally a "redundant" Southern Pacific route, the CORP was purchased by Railtex in 1994.**
  - **Line was originally built in the 1890s**
  - **In latter years, SP did not invest heavily in the Coos Bay Line.**
  - **Revenues on the CORP are still set based on the original deal.**
  - **CORP division of revenue essentially set by UP.**
- **Railtex was purchased by RailAmerica in January 2000**
- **New RailAmerica management in place after purchase by Fortress in February 2007.**
- **Line has operated at a significant deficit.**
  - **Traffic is declining**
  - **Does not justify re-investment on financial basis**

**The decision to shut down the line was not made hastily and was driven by increasing safety concerns.**

- **October 2006 – Joint inspection by FRA and ODOT found a concerning situation in Tunnel 15.**
  - **CORP agreed to hire a contractor to remedy the condition**
- **November 2006 – Tunnel 15 collapses during repairs forcing the closing of the tunnel for nearly 3 months.**
  - **Emergency repair costs CORP \$1.7M and \$500K in lost revenue**
- **March 2007 – CORP contracts with Shannon and Wilson to study all 9 tunnels on the Coos Bay Line.**
  - **Study conducted March – April**
  - **Report findings released in July**
- **May 2007 – CORP track inspector and Safety Captain starts to detect increasing amounts of water in Tunnel 15.**
- **July 2007 – Tunnel 15 has a timber set fail.**
- **August 2007 – Tunnel 19 inspections moved from vehicles to cab of locomotives due to rock fall in the tunnel.**
- **September 17, 2007 – Tunnel conditions have deteriorated more rapidly than anticipated and CORP management seeks approval to shut down the line.**
  - **Newsworthy events (Utah mine collapse and Minneapolis bridge collapse) focus CORP management's attention to potential for collapse and impact to employee safety**
- **September 21, 2007 – CORP and Senior RailAmerica team agree to embargo the Coos Bay Line due to safety concerns.**

**Since the embargo, CORP and RailAmerica senior management have met with many stakeholders to explain the need and timing of the embargo and our path forward.**

- **September 24, 2007 – Bob Jones (Regional VP), Kevin Spradlin (CORP GM) and Tom Hawksworth (CORP Sales Manager) met with the Southern Oregon Transportation Working Group**
  - **Addressed reasoning behind the swift closure**
  - **Fielded questions and responded to concerns**
- **October 3 and 4, 2007 – RailAmerica CEO John Giles, Jones, Spradlin and Hawksworth met with customers, legislators and ODOT**
  - **Outlined plans for next 90 days**
  - **Committed to meet with stakeholders by November 15**
- **October 10 and 11, 2007 – FRA and ODOT conduct tunnel inspections at the behest of Representative DeFazio**
  - **Results not released (as of November 13)**
- **October 25, 2007 – RailAmerica VP Paul Lundberg, Jones and Patrick Kerr (CORP AGM) addressed the Oregon Senate Interim Committee on Transportation**
- **November 14, 2007 – CORP and RailAmerica meet with key stakeholders to discuss plans for a Public/Private Partnership to restore the Coos Bay Line**

**Proposed capital work on the Coos Bay Line to restore it to longer term condition will cost over \$23M.**

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**Ties: \$2.42M**

There are 88 miles on the Coos Bay Sub that require tie replacement. The above cost is an average of only 500 ties per mile for a total of 44,000 ties. This will remove some 10 mph slow orders and return track speed to 25 mph for a while.

**Surfacing: \$0.669M**

This covers surfacing the above tie limits only.

**Tunnel Liner Repairs: \$6.68M (\$2.86M 0-12 months and \$3.82M 1-4 years)**

These figures are based on Engineer's Estimates from the Shannon & Wilson Report and include some degree of work in all tunnels except #16.

**Bridges - Phase 1: \$6.75M**

These repairs address defects Osmose defines as "Condition is unsafe and could cause failure at any time. Repair as soon as possible. Condition must be monitored continually until repairs have been completed".

**Proposed capital work on the Coos Bay Line (continued)**

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**Bridges – Phase 2: \$3.75M**  
These repairs address defects Osmose defines as "Condition could become unsafe and should be monitored frequently. Repair in the near future."

**Tunnel Drainage: \$3.0M (estimate)**  
Restore drainage in the tunnels to keep the track section free of mud and to prevent standing water at the base of timber sets.

**Total \$23.269M**

# Resumption of operations will take at least six months from the time a decision is made and funding is set. Construction/Repair Timeline:

	Months Subsequent to Establishment of Funding																											
	Project Start Date							Service Re-established																				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
Tunnel Repairs Bid Process Repairs	Phase 1			Phase 1 Repairs		Phase 2			Phase 2 Repairs																			
Tunnel Drainage Bid Process Repairs																												
Tie Bid Process Material Procurement Repairs	Phase 1																											
Surfacing Bid Process Material Procurement Repairs	Phase 1																											
Bridge Repairs Bid Process Material Procurement Repairs	Phase 1																											

- Project start date will be when funding is established or March 1st due to weather, whichever is later
- Phase 1 tunnel repairs address Level 1 & 2 items per the Shannon & Wilson report
- Phase 2 tunnel repairs address Level 3 - 5 items per the Shannon & Wilson report
- Phase 1 bridge repairs cover defects described by contract inspector as "condition is unsafe and could cause failure at any time. Repair as soon as possible. Condition must be monitored continuously until repairs have been completed."
- Phase 2 bridge repairs cover defects described by contract inspector as "condition could become unsafe and should be monitored frequently. Repair in the near future."

# Proposed Public/Private Partnership for the Coos Bay Line

## Nova Scotia Model

- RA's Cape Breton & Nova Scotia Railroad's Sydney Subdivision operated at a deficit for several years – railroad sought to discontinue service.
- Province of Nova Scotia's economic goals was to maintain a viable rail to Sydney
- Agreement reached with Province to provide subsidy of operating deficit and to provide capital necessary to maintain viable rail service for 5 years.

## Coos Bay Capital Costs to restore line to safe, status quo operations

- \$2.9m to stabilize tunnels 13, 15 and 18 to reopen the line
- Total of \$23.3M over 26 months to restore line to status quo
- Public/Private Partnership to include CORP, UP, ODOT, Port of Coos Bay, and Shippers
- \$4.66M share for each stakeholder could be paid as follows:

- CORP	\$4.66M from corporate funds
- UP	\$4.66M from corporate funds
- ODOT	\$4.66M grant
- Port of Coos Bay	\$4.66M grant
- Shippers on Coos Bay line	\$4.66M through a surcharge of \$204 per car for 48 months (based on guaranteed 5,700 total CLs annually)

## Ongoing Subsidy of Coos Bay Operations

- Coos Bay line currently operates at an annual deficit of approximately \$1,500,000, making operations and future capital expenditures unsustainable.
- To assure operational viability, CORP and ODOT could enter into a 5 year agreement whereby ODOT provides up to \$2m each year to defray the CORP operating deficit, and up to \$2m each year (starting in year 3) for infrastructure improvements. The annual infrastructure would be reviewed jointly by ODOT and CORP.

**Our planned timeline would have the Coos Bay Line back in operation by Autumn 2008.**

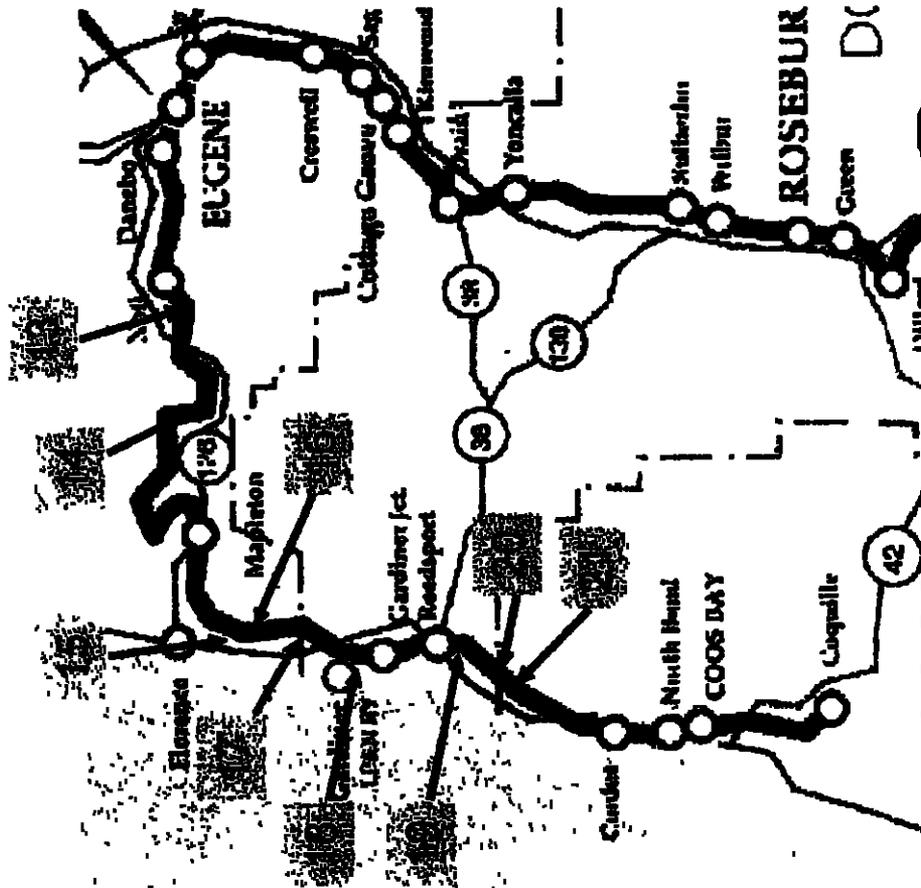
- **November 21, 2007 – CORP will issue a formal request to all stakeholders to participate in the partnership**
- **December 15, 2007 – All stakeholders make determination to participate in the partnership**
- **March 1, 2008 – All stakeholders secure funding for their share of the partnership**
  - Bid process for the repairs can commence
- **May 1, 2008 – Tunnel repairs commence**
- **September 2008 – Coos Bay Line re-opens**
  - Assumes successful repairs to the tunnels

**We look forward to a successful venture.**

- **CORP and RailAmerica are committed to our participation in a Public/Private Partnership**
- **Public/Private Partnerships are a proven model for success**
- **RailAmerica successfully participates in a PPP in Nova Scotia**
- **Please see our handout (recent article from Traffic World) for other examples**

# Appendix

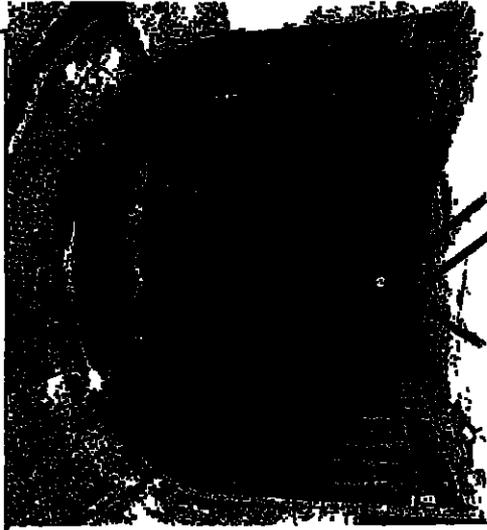
# Coos Bay Line Map and Tunnels



Typical current timber conditions



Typical wood deterioration in tunnels



Missing crown section (fell out)

# Coos Bay Historic Carloads and Capital Expenditures

- Coos Bay Historic Carloads from 1996
- Coos Bay CapEx from 2002

Year	Total
1996	7,131
1997	9,866
1998	10,142
1999	6,460
2000	6,431
2001	5,982
2002	8,376
2003	9,039
2004	5,849
2005	6,247
2006	5,845
2007	3,652

<u>Year</u>	<u>Capital \$</u>
2002	<b>\$199,653</b>
2003	<b>\$302,242</b>
2004	<b>\$191,522</b>
2005	<b>\$1,121,906</b>
2006	<b>\$1,815,076</b>
2007	<b>\$678,213</b>
TOTAL	<b>\$4,308,611</b>

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**Subject:** FW Coos Bay Joint Venture

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**From:** Lundberg, Paul (Boca) [mailto:Paul.Lundberg@railamerica.com]

**Sent:** Wednesday, April 09, 2008 1:45 PM

**To:** WARNER Chris

**Subject:** Coos Bay Joint Venture

Chris/Kelly -

Attached is an outline for the Joint Venture I described whereby CORP and ODOT would assume joint ownership of the Coos Bay line

Our new government affairs person, Heidi Eddins, has reached out to Alison Dane in Congressman DeFazio's office, to let them know we were forwarding this proposal to you

Please let me know ASAP if this is something we could work with

Thank you

PAL

Paul A. Lundberg

Vice President

RailAmerica

5300 Broken Sound Blvd., NW

Boca Raton, FL 33487

561-226-1709

## **PROPOSED VAUGHN TO CORDES JOINT VENTURE**

### **1) CREATION OF THE JOINT VENTURE**

**A Joint Venture will be created to own and maintain the CORP's line between Vaughn (MP 669 0) and Cordes (MP 763 1)**

- a. The CORP will contribute the real estate and the track structure, its revenues from its line haul divisions from Union Pacific for all shipments destined to stations south of Vaughn, and relevant real estate fees.**
- b. ODOT will contribute sufficient funds to rehabilitate the line (current estimate \$23.3 million), provide for future necessary capital investment to maintain the line in safe condition as described in 2 (d), and to provide the transportation services fee described in 2 (a)**
- c. ODOT and CORP will select an administrator of the Joint Venture to make the required business decisions.**
- d. The amount of sufficient funds to rehabilitate the line will be determined by an independent engineering firm hired by CORP and ODOT**
- e. CORP and ODOT will each have 50% interest in the ownership of the line**
- f. CORP will maintain its operating rights over Union Pacific owned trackage from Cordes to Coquille.**

### **2) OPERATION OF THE JOINT VENTURE**

**The Joint Venture will contract with the CORP to provide exclusive rail transportation services to the shippers at stations south of Vaughn. CORP will remain the common carrier**

- a. The CORP will provide these services at \$1087 per car, with a minimum payment based on 380 cars per month.**
- b. The per-car fee will be adjusted annually on October 1 by the RCAF including fuel.**
- c. The payment will cover transportation, mechanical, administrative and routine maintenance costs.**
- d. Each year, CORP will submit to the Joint Venture a recommendation for capital improvements. The Joint Venture will determine and approve the annual level of capital expenditure. The funds for these improvements will be provided as described in 1 (b).**
- e. The CORP will act as agent for the Joint Venture in collecting revenues from Union Pacific, and remitting those revenues to the Joint Venture. The CORP will also collect the relevant real estate lease fees from outside third parties, and submit those fees to the Joint Venture.**
- f. Any profits (earnings in excess of operating costs and capital expenditures) earned from rail operations will be divided equally between CORP and ODOT.**

**JOINT VENTURE, page 2**

**3) DISPOSITION OF THE JOINT VENTURE**

**CORP and/or ODOT may, at some point, decide to end the Joint Venture. If that event occurs, the following will apply.**

- a. At anytime during the tenure of the Joint Venture, the CORP, at its sole discretion, may offer its 50% share to ODOT, and ODOT will purchase that share for the net liquidation value of the track structure and the real estate that existed on the date the Joint Venture was created using the NLV method of the STB, or 50% of the value of the going concern, whichever is greater. At that point, ODOT will have the right to continue to contract with CORP for the operation of the line, or it may choose a different operator.**
- b. If at anytime during the tenure of the Joint Venture, ODOT wishes, at its sole discretion, to dissolve the Joint Venture, the entire ownership of the real estate and track structure will revert to the CORP.**
- c. If the Joint Venture decides to abandon the line, and the abandonment is approved, CORP and ODOT will divided the proceeds (either NLV or "going concern" value) from the liquidation on a 50%-50% basis.**
- d. If the Joint Venture decides to sell the line to another entity, CORP and ODOT will divide the sales proceeds on a 50%-50% basis**

Just north of the above failure there appears to be a concentrated area of active, very recent movement of the timber liner. This movement is causing two conditions, first, many sections of the timber arch rings at the top of the tunnel are split from end to end and there are approximately 10 ring timbers in a row with splits that appear to have split very recently, second, many of the arch ring timbers are shifting and either overlapping each other or crushing severely. CORP's Craig Kelsey stated that he did not see the split timbers during an inspection he made several weeks ago.

Approximately 20' south of the failed section there is a 10' +/- portion of the west wall that is bulging outward 6" - 12". Additionally, there are several areas where the timber arch rings and planking are extremely rotted due to water damage. Some of this timber is crushing, shifting or completely rotted away.

I inspected this tunnel in October 2005 during my Bridge Safety Survey and found serious problems but it has deteriorated significantly since that time. It should be noted that the condition of this tunnel and the FRA's concerns were discussed with CORP officials as part of the 2005 Bridge Safety Survey. CORP is a RailAmerica property and the condition of this tunnel was therefore also discussed in October 2005 with RailAmerica's Mark Bader, Chief Engineer - West Business Unit.

After the inspection today, CORP took the tunnel out of service until they have it formally inspected. Jim Adams and I informed CORP that, before resuming operations thru the tunnel, the FRA will require a written statement that the tunnel has been inspected and is safe for trains.

This tunnel has a failed section and other areas of the tunnel appear to be actively moving and very close to failure. This tunnel does not appear to be structurally stable and is therefore not safe for trains. If CORP's inspection determines otherwise, we need to look at an Emergency Order.

Steve Krause  
Bridge Safety Specialist

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**From:** Krause, Steven <FRA>  
**Sent:** Tuesday, October 24, 2006 10:08 PM  
**To:** Davids, Gordon <FRA>; Brinck, Mark <FRA>; Adams, James <FRA>  
**Subject:** COPR Tunnel # 15, Coos Bay Subdivision

**Subject: Central Oregon & Pacific's Tunnel #15, MP 721, Coos Bay Subdivision**

An inspection of Tunnel #15 was made today by FRA's Jim Adams and Steve Krause, and CORP's Steve Hefley, Craig Kelsey and Mark Wohlers, and Oregon Department of Transportation's John Johnson. This tunnel appears to have originally been a timber lined tunnel with much of the timber being replaced with steel beams overlaid with shotcrete. Another small area has been reinforced with steel beam rings placed between the timber rings. The tunnel was built in 1914.

Several sections at the north end of the tunnel were found to be in extremely poor condition. At one location, 4 or 5 timber arch rings in a row completely failed allowing the timber planking and a significant amount of stone to fall into the tunnel. CORP officials stated that this occurred in March or April of this year. The result is a large void at the top of the tunnel that is approximately 10' - 15' high, 10' - 12' wide and extends from one side wall to the other side wall.

5/6/2008



THEODORE R. KULONGOSKI  
Governor

April 21, 2008

Paul Lundberg, Vice-President  
RailAmerica Operations Support Group, Inc.  
5300 Broken Sound Blvd  
Boca Raton, FL 33487

Dear Mr. Lundberg:

I received your proposal for a "joint venture" between RailAmerica and the State of Oregon on the CORP line between Vaughn and Cordes. Over two months ago, I asked RailAmerica, as a sign of good faith, to fix the tunnels and re-open the line. Your latest proposal does not respond to that request.

To put it succinctly, my bottom line has not changed. As I stated when we met in person on January 24<sup>th</sup> and repeated in my letter on February 12<sup>th</sup>, the State of Oregon would be open to a discussion with all of the stakeholders on a long-term solution for the line after you have re-opened it. Your refusal to address this bottom line leads me to conclude that you have no intention of fixing and reopening the line without a significant infusion of public dollars. Since you have made no effort since the September 2007 closure to re-open the line, I believe that your actions constitute an unlawful embargo and you are violating your common carrier obligation, thereby causing a hardship for Oregon's businesses and threatening the economic health of Oregon's coastal communities.

I continue to maintain that fixing the tunnels and restoring the flow of goods along the line is not only the right thing to do, but your legal obligation. Your choice seems clear: either re-open the line or seek abandonment. We need to come to a conclusion on this matter. I will continue to press federal authorities and Oregon's congressional delegation to close this chapter.

Sincerely,

A handwritten signature in black ink, appearing to read "Theodore R. Kulongoski".

THEODORE R. KULONGOSKI  
Governor

**Application For ConnectOregon Program 2005-2006**

To ensure you have current program information, e-mail [connectoregon@odot.state.or.us](mailto:connectoregon@odot.state.or.us) to get on the electronic mailing list.

**PART A- Project Summary and Certification:** Use this form or a replica. Print and sign one original. Attach additional text at the end as necessary identified with the corresponding question number

**1. APPLICANT**

ORGANIZATION NAME Central Oregon & Pacific Railroad, Inc.	PRIMARY CONTACT PERSON AND TITLE Steve Hefley
ADDRESS 333 S.E. Mosher	TELEPHONE (541) 957-2512
CITY, STATE AND ZIP CODE Roseburg, OR 97470	FAX (541) 957-0888

**2. CO-APPLICANT**

ORGANIZATION NAME	PRIMARY CONTACT PERSON AND TITLE
ADDRESS	TELEPHONE
CITY, STATE AND ZIP CODE	FAX

**3. PROJECT NAME AND LOCATION**

Central Oregon & Pacific Railroad main line track improvements, Siskiyou, Roseburg, & Coos Bay Subdivisions.

**4. SUMMARY OF PROJECT**

Upgrade of the Central Oregon & Pacific Railroad main lines.

**5. COST SUMMARY\***

- a) ConnectOregon Grant Amount
- b) ConnectOregon Loan Amount
- c) Subtotal ConnectOregon Funds
- d) Match Amount
- e) Other Fund Amount
- f) Project Total

15,135,200
7,217,100
10,022,100
0
22,373,574

\*Leave these Cost Summary entries blank - they will fill in automatically when Part C.4 of application is completed.

**6. CERTIFICATION**

I certify that Central Oregon & Pacific Railroad, Inc. (applicant organization) supports the proposed project, has the legal authority to pledge matching funds, and has the legal authority to apply for ConnectOregon funds. I further certify that matching funds are available or will be available for the proposed project. I understand that all State rules for contracting, auditing, underwriting (where applicable) and payment will apply to this project.

Steven Hefley 3-6-06  
APPLICANT SIGNATURE DATE

Steven Hefley  
PRINTED NAME

CO APPLICANT SIGNATURE DATE

PRINTED NAME

**ConnectOregon Program**  
 Application

**PART B - Applicant Qualifications**

**1. CONTACT INFORMATION**

**APPLICANT**

<b>ORGANIZATION NAME:</b> Central Oregon & Pacific Railroad Inc.	<b>PRIMARY CONTACT PERSON AND TITLE:</b> Steve Herley
<b>ADDRESS:</b> 353 S.E. Michigan	<b>TELEPHONE:</b> (503) 967-2411
<b>CITY, STATE AND ZIP CODE:</b> Medford, OR 97504	<b>FAX:</b> (503) 967-0688

**CO-APPLICANT/CO SPONSOR**

<b>ORGANIZATION NAME:</b>	<b>PRIMARY CONTACT PERSON AND TITLE:</b>
<b>ADDRESS:</b>	<b>TELEPHONE:</b>
<b>CITY, STATE AND ZIP CODE:</b>	<b>FAX:</b>

**2. IS/ARE THE APPLICANT(S) CURRENT ON ALL STATE AND LOCAL TAXES, FEES AND ASSESSMENTS?**

YES     NO    If NO Explain:

--

**PART C - Project Description**

**3. PROJECT DESCRIPTION AND PURPOSE:** Summarize the project's description and purpose. Provide maps in 8 1/2 "X 11" format as hard copy only.

This project provides a less expensive transportation alternative for the Oregon forest products industry, while reducing the growth of heavy truck trips on Oregon roads and highways. Preserving and rehabilitating the Central Oregon & Pacific Railroad (CORP) main lines, and making them more efficient, will provide better track which can operate at higher speeds. This will result in an increase in overall capacity for the CORP railroad system, with the associated lower costs for shippers, and the ability to avoid diversion of lumber traffic to truck.

CORP has entered into a two (2) year compliance agreement with the FRA to address the overall condition of CORP's tracks. CORP and RailAmerica are committed to working with the various regulatory agencies, including FRA and ODOT, to ensure that CORP may continue to provide safe and efficient rail transportation services to the public.

The quantifiable benefits of this project are derived from determining the increased efficiencies that these track improvements will bring to the railroad. These track improvements will upgrade the overall condition of the track which will allow for higher train speeds while reducing slow orders. By increasing speeds and eliminating slow orders, trains move more quickly, and service is accomplished in a more timely fashion. Presently, cars spend on the average 5.87 days between inbound and outbound interchanges. These improvements will reduce that time by up to one day. This one day reduction is equivalent to a 17 % increase in the entire system capacity from 55,000 carloads per year to 64,000 per year.

Increasing the rail carload capacity provides Oregon forest products shippers a less expensive lower cost transportation option, while avoiding additional truck trips. This has advantage of lowering emissions, reducing highway congestion, and decreasing fuel consumption.

(continued on Addendum Page 8)

**4. ConnectOregon (CO) Project Budget**

**SOURCES OF FUNDS:** Please identify the source and amount of moneys comprising your project budget in terms of grants, loans, match and other funds.

SOURCES:	AMOUNT	PERCENT OF TOTAL	DATE AVAILABLE	
			CAL. YEAR	QUARTER
a. ConnectOregon Grant	\$7,353,782 00	78.8%	2007	1st
b. ConnectOregon Loan		0.0%		
c. Required Match (Grants - 20% of Total Project) 1	\$5,025,812 00	40.8%	2006	1st
d. Other Leveraged Funds (2)		0.0%		
e. Other Leveraged Funds (2)		0.0%		
f. Other Non-Leveraged Funds (Describe)		0.0%		
g. Other Non-Leveraged Funds (Describe)		0.0%		
<b>TOTAL*</b>		100%		

(1) Please describe the source and timing of the 20% match shown above. If applicable include the cost basis of property

The 40.8% match will be provided by Central Oregon & Pacific capital expenditures on track upgrades in the amount of \$5,025,812 in FY 2006

(2) If your project leverages other funds beyond the ConnectOregon grants, loans and match required for your project, please describe the source, timing and basis for valuing the other funds. Leveraged funds must be shown in 1(d) and 1 (e) above.

**USES OF FUNDS:** Please identify the proposed uses and amount of moneys comprising the project budget.

USES:	AMOUNT	PERCENT OF TOTAL	DATE AVAILABLE	
			CAL. YEAR	QUARTER
Labor (Payroll)	\$977,988 00	7.6%		
Contracted Services (If Known)	\$4,419,508 00	35.7%		
Materials and Supplies	\$8,982,080 00	72.2%		
Capital Outlay (Land)		0.0%		
Capital Outlay (Buildings)		0.0%		
Capital Outlay (Equipment)		0.0%		
Other (Describe)		0.0%		
Other (Describe)		0.0%		
Other (Describe)		0.0%		
Other (Describe)		0.0%		
<b>TOTAL*</b>	12,379,574	100%		

\*Totals for Sources of Funds and Uses of Funds must be equal.

**6. REAL ESTATE**

EXACT ADDRESS OR LEGAL DESCRIPTION.

a. IS PROPERTY OWNED BY APPLICANT(S)?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	PURCHASE PRICE	DATE
b. IS PROPERTY TO BE PURCHASED?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	PURCHASE PRICE	DATE
c. IS PROPERTY TO BE LEASED?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO		
d. DOES THE PROJECT INCLUDE EASEMENTS OR DONATED PROPERTY?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO		

Provide any additional details here:

Track improvements will be on existing railroad right of way

**PART D - Project Considerations**

NOTE: The independent review consultant who will evaluate the project may consider other published or publicly available information when conducting this review

**6. TRANSPORTATION COST REDUCTION: Describe how the project reduces transportation costs for Oregon businesses.**

This project will reduce transportation costs for Oregon forest products industries by providing and maintaining a less expensive transportation alternative. Lower rail rates vs truck will result in a savings of up to \$17,000,000 per year. This investment will make these Oregon industries more competitive against other forest products businesses throughout the United States.

The existing track condition and track speeds CORP can only hamper future intermodal connectivity as the demand for railcars grows. If the line cannot support an influx of additional rail cars to service increased future demand, the number of opportunities to increase industry output by shipping via rail is diminished.

**7. MODAL CONNECTIVITY: Describe how the project benefits or connects two or more modes of transportation.**

This project will provide an alternative to truck transportation for Oregon businesses by making the CORP more efficient, and capable of handling more carloads of traffic.

The avoided truck trips will result in reduced highway congestion from truck in the Roseburg area. The avoidance of up to 63,000 annual truck trips will result in avoiding an increase in the truck Average Annual Daily Traffic (AADT) of up to 4%.

The applicant proposes to quantify the improved connectivity by showing the increase in forest products carloads

**8. STATEWIDE OR REGIONAL TRANSPORTATION LINK:** Describe how the project creates a critical link in a statewide or regional transportation system

This project will connect Oregon businesses to the national rail system, making them more competitive. Using rail reduces congestion on the highway system while lowering transportation costs for the businesses. The reduced congestion will be Statewide by avoiding up to 63,000 additional annual truck trips on I-5 by increasing rail carloads up to 9,000 per year.

The applicant proposes to quantify the improvements in terms of additional carloads of forest products carried and job creation.

**9. COST BORNE BY APPLICANT(S):** Provide the amount by which the project will exceed, or provide a match beyond ConnectOregon's minimum grant-match requirement of 20%.

The 40.6% match will be provided by Central Oregon & Pacific capital expenditures on track upgrades in the amount of \$5,025,812 in FY 2006.

The full project is beyond the ability of the applicant to finance with outside sources due to the low rate of return.

**10. PERMANENT AND CONSTRUCTION JOBS CREATION/RETENTION:** Describe how the project creates and retains permanent and construction jobs in Oregon.

Job estimates are derived from a previous study conducted on the impact of a CORP Winchester Rail Yard construction project, base on a percentage of the carload growth of that project.

Construction Jobs: These will be primarily limited to a track construction firm, and are assumed to be out of State. This would total about 26 jobs, and these would be for the duration of the project, or about 12 months.

Other Direct Jobs, Not Including Construction: This project will provide infrastructure that could result in the creation of an average of up to 571 railroad and forest products industry jobs per year in the Southwest Oregon Region.

As a result of this project improvement, railroad employment is could to grow from 121 jobs to 137 jobs. This employment increase is directly related to the expanded capacity provided by the project and will not take place without the improvements. The average annual wage of new CORP rail jobs is estimated to be \$55,000 based on 2005 year end data and forecasted 2008 trends.

(continued Addendum Page 9)

**11. ANTICIPATED CONSTRUCTION START DATE OR EQUIVALENT:**

1 January 2006

**12. ANTICIPATED PROJECT COMPLETION DATE:**

31 December 2007

**13. CONSTRUCTION READINESS:** Provide a project timeline and describe where the project is on this timeline in relation to planning, design and permitting issues.

The project requires no rezoning, land use permits, or environmental approvals

**14. PROJECT OPERATIONS:** How will the ongoing maintenance, operation and replacement of the project be financed?

The maintenance operation and replacement of the project will be financed by the Central Oregon & Pacific Railroad capital expenditure program. These funds will be provided by the additional revenue received as a result of this project.

**15. OTHER CONSIDERATIONS AND INFORMATION :** Describe any other considerations and information you would like taken into account about the project.

The project uses the efficiencies of rail to reduce emissions and fuel consumption vs. truck. This will result in avoiding additional emissions, and savings of 1 million gallons per year in diesel fuel consumption.

**PART E - Supporting Materials:** Provide a list here of supporting materials that will be provided as part of your hard copy submission.

The following additional materials are provided in the hard copy application

- Attachment A: CORP Track Improvement Public Benefit Brief
- Attachment B: Economic & Social Benefit of Diverting Truck Traffic with CORP Yard Improvements
- Attachment C: CORP Track Project List Spreadsheets
- Attachment D: CORP Track Improvement Public Benefit Spreadsheets

**ADDENDUM PAGE 8:** Attach additional text here as necessary, identifying the corresponding application question number you are completing

**PART C - 3: PURPOSE**

Aside from reducing rail traffic congestion and shipping costs, the project will also foster benefits for the community of Roseburg. Faster trains spend less time blocking grade crossings. This has the impact of reducing traffic congestion in central Roseburg, improving emergency vehicle response times, improving air quality, and reducing fuel consumption in the community.

The CORP is comprised of approximately 439 miles of mainline. These improvements would consist of providing heavier rail, replacing ties, replacing turnouts, bridge and tunnel improvements, surfacing and smoothing the roadbed, and providing for signal improvements. The major components of this upgrade program are as follows:

- Relay 79,060 LF of curve worn rail on various curves on the Roseburg, Siskiyou, and Coos Bay Subdivisions
- Relay 141,122 LF of 90# jointed rail with 112# or larger Continuous Welded Rail on the Roseburg Sub
- Replace 85,358 defective cross ties
- Surface 111 miles of track
- Renew Old Hwy 99 crossing at MP 557.3
- Replace 249 switch ties at various locations
- Replace 6 turnouts at Dilard Yard
- Make repairs on various bridges based on the annual bridge inspection
- Eliminate remaining pole line and replace with electracode
- Grind 83.84 Pass miles between MP 403 16 - 487
- Repair tunnel lining in tunnels 13, 16, and 20 on the Coos Bay Subdivision
- Eliminate 360 joints in welded rail

The CORP will complete the following projects in FY 2006 as the match for the funds:

- Relay 79,060 LF of curve worn rail on various curves on the Roseburg, Siskiyou, and Coos Bay Subdivisions.
- Relay 62,0632 LF of 90# jointed rail with 136# Continuous Welded Rail on the Roseburg Sub.
- Replace 35,358 defective cross ties
- Surface 80 miles of track
- Renew Old Hwy 99 crossing at MP 557.3
- Replace 249 switch ties at various locations
- Replace 6 turnouts at Dilard Yard
- Make repairs on various bridges based on the annual bridge inspection
- Eliminate pole line and replace with electracode

The following are the projects proposed for the ConnectOregon grant funds in order of priority

- Replace 50,000 defective cross ties
- Surface 31 miles of track
- Repair tunnel lining in tunnels 13, 16, and 20 on the Coos Bay Subdivision
- Relay 78,000 LF of 90# jointed rail with 112# or larger Continuous Welded Rail on the Roseburg Sub
- Make repairs on various bridges based on the annual bridge inspection
- Eliminate remaining active pole line and replace with electracode
- Grind 83.84 Pass miles between MP 403 16 - 487
- Eliminate 360 joints in welded rail

Completing any or all of the above improvements using ConnectOregon would contribute to the higher train speeds desired and provide some of the benefits previously described

**ADDENDUM PAGE 9:** Attach additional text here as necessary, identifying the corresponding application question number you are completing.

**PART D - 10: PERMANENT AND CONSTRUCTION JOBS CREATION/RETENTION.**

Our analysis indicates that with added rail capacity, employment in the forest products industry could expand by 560 jobs over the 20 year period following completion of the proposed project. Forest products jobs created are estimated at \$42,408 per year based on computer modeling estimates. These wages are above the State average and all direct jobs are expected to be family wage jobs.

We believe that the Medford-White City areas and the North Spit area of the Port of Coos Bay present the greatest potential for attracting new industries and family wage jobs to the CORP. Since 2002, the following new industries have located on CORP:

Company	Jobs	Year
Louisiana-Pacific (Panel Products), Rogue River	40	2002
Westwood, Reedsport	30	2004
McGovern Metals, Roseburg	6	2004
HFP Transloading, Grants Pass	4	2004
American Bridge, Reedsport	120	2004
Goshen Reload, Goshen	4	2005
Southport Lumber, North Bend	70	2005
South Coast Lumber, Merlin	2	2005
Amy's Kitchen, Central Point	200	2006
Williams' Bakery, Springfield	275	2006
<b>Total New Customer Jobs</b>	<b>751</b>	

Without the additional improvements offered by the track projects, the pace of industrial development may lessen as customers seeking rail service are forced to consider railroads in other geographic areas as an alternative to the operational capacity constrained CORP.

**Indirect and Induced Jobs:** In addition to the direct jobs described above, we estimate that the project could create an additional 1,523 indirect and induced jobs per year over the 22 year period including construction and operation of the improvements.

# **Attachment**

**A:**

## **CORP Track Improvement Public Benefit Brief**

## **Public Benefit Central Oregon & Pacific Railroad Track Improvements**

- **Avoided Social Costs from Additional Truck Trips  
(Congestion, air pollution, noise, and accident):**
  - **Total: \$8,600,000**
  - **Net Present Value (7% Gov't discount Rate): \$4,200,000**
- **Reduced Traffic Congestion:**
  - **Avoids Up To 63,000 Annual Truck Trips**
  - **Reduces Truck Average Annual Daily Traffic (AADT) in Roseburg area by up to 4%**
- **Reduced Emissions:**
  - **Decreased NOx emissions by 35 tons in 2012**
- **Reduced Fuel Consumption**
  - **Decreased Fuel Consumption by up to 1 Million Gallons Annually by 2015**
- **Reduced Costs to Shippers**
  - **Reduces transportation and logistics costs by up to \$17,000,000 per year for Oregon forest products industries.**

# **Attachment**

## **B:**

### **Economic & Social Benefit of Diverting Truck Traffic with CORP Yard Improvements**

**Economic & Social Benefit**  
**of**  
**Diverting Truck Traffic**  
**with**  
**Central Oregon and Pacific Railroad**  
**Track Improvements**

## **Track Improvements**

### **Public Benefit from Marginal Cost Avoidance of Additional Truck Trips**

The public benefit of the proposed CORP track improvements is based on avoidance of marginal highway costs. These costs are from the impact of each additional truck upon Oregon freeways (I-5). As Oregon recovers most costs associated with additional pavement damage, the costs evaluated are the social costs including congestion, air pollution, noise, and accidents.

The 2005 base year carload traffic was over 52,000 carloads. Existing maximum mainline capacity is approximately 55,000 carloads per year. The proposed track improvements yard would increase that capacity to approximately 64,000 carloads per year.

Each carload generates the equivalent of 3.5 loaded truck trips. Since lumber (the major commodity moved by CORP) uses unique equipment, the possibility of a backhaul is nil, and this empty backhaul is also attributed to a carload for another 3.5 trips.

The marginal costs are calculated by multiplying a cost factor per mile for each truck trip, based on truck weight, and urban/rural freeway designation. The lighter weights were used to calculate the empty backhaul. The diverted truck traffic would use a mix of I-5 northbound or southbound. The total truck trips were evenly split between northbound and southbound. The calculations are on the spreadsheets associated with this study.

The results are calculated with a carload growth rate of 5% and a Government discount rate of 7%. This gives a net present value of the public benefits from avoided marginal costs of \$4,200,000.

**Marginal Cost Calculations**

From 2000 FHWA update to the 1997 Highway Cost Allocation Study.

**Table 13. 2000 Pavement, Congestion, Crash, Air Pollution, and Noise Costs for Illustrative Vehicles Under Specific Conditions**

Vehicle Class/Highway Class	Cents per Mile					Total
	Pavement	Congestion	Crash	Air Pollution	Noise	
Rural Interstate	0	0.78	0.85	1.54	0.01	2.97
Urban Interstate	0.1	7.70	1.19	1.90	0.08	10.97
40 mph 4-lane S.U. Truck/Rural Interstate	1.0	2.45	0.47	3.85	0.09	7.86
40 mph 4-lane S.U. Truck/Urban Interstate	8.1	24.48	0.85	4.48	1.60	39.51
60 mph 4-lane S.U. Truck/Rural Interstate	8.0	3.27	0.47	3.85	0.11	15.70
60 mph 4-lane S.U. Truck/Urban Interstate	18.1	22.04	0.85	4.48	1.85	57.32
80 mph 8-lane Conurb/Rural Interstate	2.3	1.80	0.85	3.85	0.17	10.00
80 mph 8-lane Conurb/Urban Interstate	10.8	18.30	1.15	4.48	2.78	37.51
80 mph 8-lane Conurb/Rural Interstate	12.7	2.25	0.85	3.85	0.19	19.81
80 mph 8-lane Conurb/Urban Interstate	40.8	20.00	1.15	4.48	3.04	69.54

NOTE: S.U. = Single Use, Comb. = Combined; Air pollution costs are averages of costs of travel on all rural and urban highway classes, not just interstates. Available data do not allow differences in air pollution costs for heavy truck classes to be distinguished.

The additional truck trip from the Roseburg area will be 100 miles to the closest rail transload facility. The majority of this mileage is classified as rural. Baseline calculation for the study will be 3.5 truckloads per carload, plus the backhaul. Loaded trucks are considered 80k and the empty at 50 k.

Costs per mile excluding pavement damage are \$0.0715 per mile for rural 80k truck (load), and \$0.0678 per mile for rural 60k truck (empty). Each truck trip at 100 miles each way accounts for \$13.93. Therefore, each carload saves 3.5 x \$13.93 or \$48.75 within the State of Oregon.

Assuming 5% freight rail traffic growth, total social costs avoided from 2008 through 2027 are \$8,600,000. Total social costs considering 7% annual discount rate are \$4,200,000

#### **Additional Truck Trips Avoided**

The track improvements would avoid additional truck trips associated with the shift from rail to truck. Many of the trips would move to another railroad transload facility, while others would be entirely truck and cross the state line. The estimates used in this study were conservative in that they limited the additional truck trips to 100 miles from the area of Roseburg. Trips were evenly split between northbound and southbound on I-5 in the vicinity of Roseburg. This assumption gives the most conservative estimate for truck traffic impacts.

The yard will reduce additional annual truck trips on I-5 by approximately 63,000 by 2015. Most of these truck trips would increase the Average Annual Daily Traffic (AADT) in the area of Roseburg. Truck increase is 2% northbound in 2024, and 4% southbound in 2018.

#### **Reduced Emissions**

New requirements for improved diesel emissions technologies will reduce emissions for both truck and rail. But even with these improvements, rail has a lowered rate of emission per ton-mile. For NO<sub>x</sub>, the estimated reduction in emissions for the year 2012 as a result of avoided truck trips is .4 grams per ton mile. Based upon a count of 165,000 ton-miles, the reduction amounts to 35 tons of NO<sub>x</sub> in 2012.

#### **Reduced Fuel Consumption**

Diesel engine design has resulted decreased fuel consumption for both truck and locomotive engines. But using existing fuel consumption rates, the yard could reduce increased fuel consumption due to additional truck trips by up to 1 million gallons per year by 2015.

#### **Lower Shipping costs.**

Using the LA Basin as a major consumption market for forest products, analysis shows a transportation rate differential of \$1900 per carload for truck vs rail. This estimate is conservative in that many shipments have an even longer length of haul. The additional logistics costs which could be borne by the forest products industry would be in up to \$17,000,000 per year.

**Attachment  
C:**

**CORP Track Project List Spreadsheet**

**CORP Connect Oregon Plan**

Program	Description	Cost	Comments
CORP	Curve Rail (In.Ft.) Rehwy 79,060 LF of curve worn rail on various curves on the Roseburg, Slidyaou, and Coos Bay Subdivisions.	\$3,390,000	
CORP	COF Rail (In. Ft.) Rehwy 141,122 LF of 90# jointed rail with 112# or larger Continuous Welded Rail on the Roseburg Sub.	\$872,686	
CORP	Ties (each) Replace 85,358 defective cross ties	\$5,093,985	
CORP	Surfacing (miles) Surface 111 miles of track	\$797,190	
CORP	Crossings (brk) Renew Old Hwy 99 crossing at MP 557.3	\$50,209	
CORP	Switch Ties(Fod.Ft.) Replace 249 switch ties at various locations	\$43,226	
CORP	Turnouts Replace 5 turnouts at Dillard Yard	\$96,230	
CORP	Bridges Make repairs on various bridges based on the annual bridge inspection	\$500,000	
CORP	Signals Eliminate remaining pole line and replace with electrocode	\$350,000	
CORP	Grinding Grind 284 Pass miles between MP 345 - 487	\$222,298	
CORP	Tunnel Repairs Repair tunnel lining in tunnels 13, 15, and 20 on the Coos Bay Subdivision	\$724,000	
CORP	Joint Elimination Eliminate 350 joints in welded rail	\$239,750	
CORP	Misc.	\$0	

**PROJECT TOTAL \$12,379,574**

**CORP MATCHING FUNDS \$5,025,812**

**40.6%**

ConnectOregon Funded Projects - ODOT Region 2  
ConnectOregon Funded Projects - ODOT Region 3

\$1,477,482  
\$5,876,270

**CORP Matching Funds Projects**

Program	Description	Cost	Comments	Schedule
CORP	Curve Rail (In. Ft.)	\$990,000	Rail purchased in '05 and cost not in this figure	5/1/06 - 8/4/06
CORP	COF Rail (In. Ft.)	\$672,686	Rail purchased in '05 and cost not in this figure	5/1/06 - 8/4/06
CORP	Ties (each)	\$2,178,985		05/15/2006 - 8/11/06
CORP	Surfacing (miles)	\$574,476		5/15/06 - 8/31/06
CORP	Crossings (trk)	\$50,209		10/1/06 - 10/31/06
CORP	Switch Ties(Dtd. Ft.)	\$43,226		3/1/06 - 4/30/06
CORP	Turnouts	\$96,230		3/1/06 - 4/30/06
CORP	Bridges	\$200,000		8/1/06 - 8/31/06
CORP	Signals	\$20,000		3/1/06 - 8/31/06
CORP	Grinding			
CORP	Tunnel Repairs			
CORP	Joint Elimination			
CORP	Misc.			

**CORP TOTAL \$5,025,812**

**Connect Oregon Funded Projects  
 ODOT Region 3**

Priority	Program	Description	Cost	Comments	Schedule
4	Curve Rail (ln, ft.) OOE Rail (ln, ft.)	Relay 60,810 LF of curve worn rail on various curves on the Roseburg, Seelyou, and Coos Bay Substations.	\$1,845,990		6/1/07 - 8/31/07
1	Ties (each)	Replace 50,000 defective cross ties MP 487 - MP 539, MP 589 MP 602	\$2,915,000		6/1/07 - 10/31/07
2	Surfacing (miles) Crossings (brk.) Switch Ties(bd,ft.) Turnouts	Surface 27.5 miles of track (Surfacing limits will minor Rail and The project limits)	\$197,569		6/15/07 - 11/15/07
5	Bridges	Make repairs on various bridges based on the annual bridge inspection	\$80,000		7/1/07 - 10/31/07
6	Signals	Eliminate remaining active pole line and replace with electrocode MP 605 - 620.96, MP 430 - MP 440	\$271,573		3/1/07 - 8/31/07
7	Grinding	Grind 168 Pass miles between MP 403.16 - 487	\$222,298		06/01/07 - 6/15/07
3	Tunnel Repairs	Repeat tunnel lining in tunnel 20 on the Coos Bay Substation	\$152,040		4/1/07 - 7/31/07
8	Joint Elimination	Eliminate 280 joints in welded rail MP 540 - MP 620.96	\$191,800		3/1/07 - 8/30/07
	MISC.				

**CONNECT OREGON TOTAL \$5,876,270**

**Connect Oregon Funded Projects  
 ODOT Region 2**

Priority	Program	Description	Cost	Comments	Schedule
2	Curve Rail (In.ft.) OOE Rail (In.ft.)	Re lay 18,250 LF of curve worn rail on various curves on the Roseburg and Coos Bay Subdivisions.	\$554,010		6/1/07 - 8/31/07
3	Ties (each) Surfacing (miles) Crossings (brk) Switch Ties(Ded.ft.)	Surface 3.5 miles of track (Surfacing limits will mirror Rail project limits)	\$25,145		6/15/07 - 11/15/07
4	Turnouts Bridges	Make repairs on various bridges based on the annual bridge inspection	\$220,000		7/1/07 - 10/31/07
5	Signals	Eliminate remaining active pole line and replace with electracode MP 630.7 - MP 644.1	\$58,427		3/1/07 - 8/31/07
	Grinding				
1	Tunnel Repairs Joint	Repair tunnel lining in tunnels 13 and 15 on the Coos Bay Subdivision	\$571,960		4/1/07 - 7/31/07
6	Elimination Misc.	Eliminate 70 joints in welded rail MP 620.96 - MP 644	\$47,950		3/1/07 - 8/30/07

**CONNECT OREGON TOTAL \$1,477,492**

CORP Rail Projects

Curve #	MP	Degree	East/West Rail	VHL	GFL	Existing Rail	Length	Relay Year	Comments
403D	403.5	8	West	1/4	1/2	113	800	2008	
403E	403.4	11	East		5/8	132	200	2008	
405F	405.45	8	East	1/4		132	200	2008	
405G	405.6	8	East		5/8	138	108	2008	
406D	406.7	10	West	1/4	1/2	132	500	2008	
407A	407.5	10	West		1/2	132	800	2008	
408A	408.2	10	East		5/8	132	800	2008	
408D	408.5	10	East		1/2	113	450	2008	
412A	412.3	10	East	5/8		132	500	2008	
412A	412.3	10	West	1/2		132	550	2008	
413A	413.15	10	West	5/8		132	700	2008	
413A	413.16	10	East		1/2	132	700	2008	
414F	414.8	10	West	5/8		132	500	2008	
414F	414.8	10	East		5/8	132	500	2008	
416F	416.7	10	East		5/8	132	1000	2008	
417A	417.18	10	East		5/8	132	1000	2008	
418A	418.2	10	West	1/4	5/8	132	700	2008	
418E	418.8	10	West	1/2		132	650	2008	
418E	418.8	10	East		1/2	132	650	2008	
418B	418.45	10	East	5/8		132	600	2008	
418C	418.85	10	West		1/2	113	500	2008	
485	485	10.5	West			113	600	2008	
485	485	10.5	East			113	600	2008	
485A	485.1	5.5				113	700	2008	
486C	485.4	8				113	600	2008	
488B	488.4	10				113	800	2008	
487C	487.5	10				113	700	2008	
503D	503.9	8.8				113	620	2008	
512B	512.15	8	West	5/8		138	600	2008	
539	532.9	10				113	1350	2008	
534C	534.6	4	West			112	1000	2008	And tangent north
534C	534.6	4	East			112	1000	2008	And tangent north
535	534.9	10	West			113	1350	2008	
535	534.9	10	East			113	1350	2008	
535D	533.9	10	West	1/4	3/8	112	400	2008	
535A	533.5	8.9	West	1/4	3/8	113	600	2008	8 deg portion of compound only
534D	534.3	8	East	3/8	3/8	112	300	2008	
534B	534.4	5	West	1/4	3/8	113	500	2008	
535	534.9	8	West	1/4	3/8	112	1300	2008	
537	538.9	4	West	1/4	3/8	113	1100	2008	
571B	571.7	8	West			113	500	2008	
571B	571.7	5	East			113	500	2008	
571C	571.8	4	West			113	600	2008	
571C	571.8	4	East			113	600	2008	
573	573.15	7	West	1/2		138	1300	2008	
573	573.15	7	East	1/2	1/4	138	1600	2008	
573A	572.25	7	West	3/8	1/2	132	580	2008	
573	573.15	5.5	East	3/8	1/2	113	480	2008	
573A	573.25	6.5	West	3/8	1/2	113	600	2008	
588	588	8	West	3/8	1/2	112	1000	2008	
588B	588.15	7	West	1/4	1/2	112	630	2008	
584C	584.75	11	West	5/8		138	600	2008	
585A	585.55	4	West	3/8	3/8	113	600	2008	
588C	588.7	10	East	1/4	1/2	133	1500	2008	
607	607.3	6	East	1/2	1/2	138	1800	2008	
607A	607.5	8	West	3/8	1/2	138	750	2008	
610B	610.8	4	West	1/4	1/2	133	1650	2008	
618B	618.8	7	West	3/8	5/8	132	650	2008	

**CORP Rail Projects**

618C	618.7	8	West	5/8		132	700	2008	
619C	619.7	8	East	1/8	3/8	132	700	2008	
620A	620.1	10	West	3/8	1/2	132	900	2008	
620A	620.1	10	East	5/8		132	800	2008	
621	620.9	7	West	3/8	1/2	132	1600	2008	
643B	643.5	8	East	1/4	5/8	132	1100	2008	
668A	668.7	8	East	1/2		113	1050	2008	
670	670	8	West	1/2	3/8	113	800	2008	
674	674	6	West	3/8	3/8	113	1600	2008	
683	682.9	6	West	1/4	1/2	113	2200	2008	
688A	688.4	6	East	1/4	3/8	113	1100	2008	
688	687.9	8	West	1/4	3/8	113	700	2008	
688C	688.5	4	West	1/4	1/2	113	900	2008	
689	688.9	4 1/2	West	1/4	1/2	113	2200	2008	4 deg portion only
689A	689.0	8 1/4	East	1/4	1/2	113	2200	2008	
689A	689.2	3	West	1/4	3/8	113	620	2008	
691	691.15	8	West	1/4	1/2	113	810	2008	
694	694.1	6	East	1/4	1/2	113	900	2008	
698	698.9	4	East	1/4	3/8	113	1300	2008	
703D	703.6	5	East	1/4	3/8	113	480	2008	
704A	704.28	7	East	3/8	1/2	132	1400	2008	
706	706.1	4	East	1/4	1/2	113	3200	2008	Both rails of curve
718B	718.6	7	East	1/4	5/8	113	700	2008	
718C	718.8	8	West	1/4	5/8	132	1200	2008	
723	723	4	East	1/4	1/2	113	900	2008	
726	726.9	8	East	1/4	5/8	132	800	2008	
728C	728.8	8	East	1/2	1/2	130	1330	2008	
728	728	4	West	1/4	1/2	113	1300	2008	
738B	738.4	4	West	1/4	1/2	113	600	2008	
738C	738.7	5	East	1/4	1/2	112	800	2008	
768B	768.65	8	West	3/8	1/2	113	800	2008	
Tan	818.45					90	700	2008	Second Hand Rail - Both
817C	817.55	8				113	700	2008	Second Hand Rail - High
817D	817.8	8				113	800	2008	Second Hand Rail - High
824B	823.4	10				132	800	2008	Second Hand Rail - High
825B	825.3	4				132	800	2008	Second Hand Rail - High
831	831	8				113	400	2008	Second Hand Rail - High
838B	838.5	8				113	1400	2008	Second Hand Rail - High
888D	888.8	4				90	8300	2008	SH Rail - Curve and Tangent
891	891	3				90	14300	2008	SH Rail - Curve and Tangent
Tan	892.8					90	6800	2008	Second Hand Rail - Both
Tan	893.8					90	6800	2008	Second Hand Rail - Both
Tan	898.7					90	17100	2008	Second Hand Rail - Both
Tan	899.6					90	6800	2008	Second Hand Rail - Both

Curve Rail Total 73238  
 OOF Rail Total 62500

ConnectOregon Rail Projects

Curve #	MP	Degree	East/West Rail	V-L	GFL	Existing Rail	Length	Relay Year	Comments
403E	403.79	4	East	1/4	3/8	112	800	2007	
404A	404.28	8	West		1/2	132	600	2007	
405F	405.45	8	West	3/8	3/8	138	200	2007	
405J	405.9	7	East	1/4	1/2	136	200	2007	
406A	406.1	10	West		1/2	132	200	2007	
406E	406.5	10	East	1/4	1/2	136	500	2007	
406A	406.2	10	East		1/2	132	800	2007	
406C	406.5	10	East		1/2	132	700	2007	
406D	406.7	7.5	West	3/8		113	1000	2007	
410	410	8	East		1/2	132	550	2007	
410C	410.88	10	East		1/2	132	800	2007	
411	411	10	West	3/8		132	480	2007	
411	411	10	East		3/8	132	450	2007	
413C	413.8	12	West	1/2		132	1200	2007	
416E	416.78	4	West	1/2		132	550	2007	
416B	416.2	3.5	East	1/2		138	300	2007	
416D	416.5	7	East		1/2	132	400	2007	
416E	416.85	10	West		1/2	132	480	2007	
417C	417.8	8	East		1/2	132	500	2007	
418	418	14	East		1/4	138	2000	2007	Hill to low
418B	418.25	8	East		1/2	138	600	2007	
418D	418.55	8	West		1/2	132	400	2007	
418D	418.55	8	East	3/8		132	400	2007	
419D	419.7	10	East		1/2	132	300	2007	
419E	419.8	10	West		1/2	132	600	2007	
419F	419.9	10	East		1/2	132	350	2007	
420C	420.29	10	East	1/2		138	600	2007	
420E	420.7	10	East	1/4	1/2	132	700	2007	
421B	421.35	8	West	1/2		132	400	2007	
424B	424.3	8	West		1/2	132	1000	2007	
426A	426.3	7.5	East		1/2	132	1000	2007	
454	453.9	8	East	1/4	3/8	113	1800	2007	
458A	458.8	8	West		3/8	112	2200	2007	
488	488.15	4	West		3/8	113	2800	2007	
551B	551.5	8	West		1/2	132	400	2007	
553	553.1	8	West	1/4	1/2	132	1000	2007	
563B	563.5	8	West	1/4	3/8	113	300	2007	
563E	563.8	8	West	1/4	3/8	113	200	2007	
584A	584.08	4	West	1/4	3/8	112	200	2007	
584H	584.7	8	East	1/4	3/8	113	500	2007	
573A	573.35	7	East	3/8		132	500	2007	
589A	589.4	7	West	1/4	3/8	132	800	2007	
589A	589.4	7	East	1/2		132	800	2007	
584A	584.45	8	East	3/8	3/8	138	800	2007	
584C	584.75	11	East	1/4	3/8	138	800	2007	
586	585.1	8	West		1/2	136	1200	2007	
586A	586.85	8	West	3/8	3/8	138	1000	2007	
586A	586.85	8	East	1/2		138	1000	2007	
586B	586.85	8.5	East	3/8	3/8	138	800	2007	
587	587	8	West	3/8	3/8	138	700	2007	
606	606.4	4	West	3/8	3/8	132	1400	2007	
618D	618.8	8	West	3/8	3/8	138	800	2007	
620	620	7	West	1/2		132	600	2007	
620	620	7	East	1/2	3/8	132	600	2007	

ConnectOregon Rail Projects

843A	843.1	8	West	1/2		132	800	2007	
844A	844.9	4	West	1/2		132	2000	2007	
844A	844.8	4	East	3/8	1/2	132	2000	2007	
857B	857.4	8	West	1/4	3/8	132	1000	2007	
877B	877.9	8	East	1/2		132	1100	2007	
881B	881.9	8	West	1/4	3/8	132	1800	2007	
884A	884.48	4	West		3/8	113	900	2007	
888	888.1	6	East	3/8	1/4	130	1150	2007	
888	888.1	6	West		1/2	130	1150	2007	
888	888.2	8	East	1/2		130	1000	2007	
703C	703.5	6	West	1/4	3/8	115	800	2007	
707B	707.4	4	East	1/4	3/8	115	850	2007	
718	718.1	3.5	East	3/8	3/8	115	1400	2007	
718B	718.8	4	East	1/4	3/8	115	750	2007	
728	728	6	East	1/4	1/2	130	1200	2007	
724A	724.2	7	West	1/4	3/8	112	950	2007	
728A	728.1	4	West		3/8	115	900	2007	
740	740.5	8	West	1/4	1/8	115	2350	2007	
748	748.2	3.5	West	1/4	1/2	115	1400	2007	5 deg portion only
748A	748.4	8	East	1/4	1/2	110	1250	2007	
408	408	7.5	East	1/4	3/8	130	300	2007	
418A	418.18	10	West		3/8	132	700	2007	
422B	422.45	19	West		3/8	132	800	2007	
578B	578.4	5	West		3/8	132	900	2007	
579	579.3	3	West		3/8	132	1100	2007	
591B	591.5	6	West		3/8	132	1100	2007	
598.2	598.3	1871	both				11620	2007	

Rail Relay Total 79000

**Attachment  
D:**

**CORP Track Improvement Public  
Benefit Analysis Spreadsheets**

Rail Project Improvements

Central Oregon & Pacific Track Project Impact Analysis

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2027
Annual Carload Demand	55,054	57,508	60,897	63,731	66,918	70,284	73,777	77,488	81,338	85,408	89,877	94,160	153,377
<i>Millions of Truck Improvements</i>													
Actual Annual Carloads	66,000	66,000	66,000	66,000	66,000	66,000	66,000	66,000	66,000	66,000	66,000	66,000	66,000
Carloads Overhead to Truck	54	2,808	5,697	8,731	11,918	15,264	18,777	22,488	26,339	30,408	34,877	38,160	88,377
Additional Truck Trips	376	18,644	38,678	61,120	83,428	106,847	131,440	157,282	184,376	212,843	242,736	274,122	888,841
<i>Millions of Truck Improvements</i>													
Actual Annual Carloads	66,000	66,000	60,697	63,731	64,000	64,000	64,000	64,000	64,000	64,000	64,000	64,000	64,000
Carloads Overhead to Truck	54	2808	0	0	2818	6284	9777	13488	17339	21408	25877	30160	88377
Additional Truck Trips	376	18944	0	0	20428	43947	68440	94382	121376	148843	178738	211122	625841
Truck Trips Avoided with New Yard	0	0	38,678	61,120	83,000	63,000	63,000	63,000	63,000	63,000	63,000	63,000	63,000



Additional Capacity From Track Improvements

- Base Year Carloads - 2005
- Existing Railroad Capacity
- CORP Annual Carload Growth
- Existing System Dwell (days)
- Improved System Dwell (days)
- Additional Capacity From Track Improvements



# Central Oregon & Pacific Track Project Impact Analysis

	2008	2007	2008	2009	2010	2011	2012	2013	2014	2027
Additional Truck Tolls	0	0	39,876	61,120	63,000	63,000	63,000	63,000	63,000	63,000
Additional VMT	0	0	3,987,616	6,111,987	6,300,000	6,300,000	6,300,000	6,300,000	6,300,000	6,300,000
<b>Additional Traffic Without Truck Improvement</b>										
MP 129.22 (Northbound)										
Total AADT			32300							
Truck AADT			3684							
% Truck			12.07%							
Additional Truck AADT						121				
Increased Truck AADT 2024										2.1%
Total % Increase in 2024										0.3%
MP 119.61 (Southbound)										
Total AADT			36300							
Truck AADT			1786							
% Truck			8.13%							
Additional Truck AADT										121
Increased Truck AADT 2024										3.7%
Total % Increase in 2016										0.3%

Data from CDOT OTMS Traffic Volume and Vehicle Classification tables

Additional Emissions & Fuel

# Central Oregon & Pacific Track Project Impact Analysis

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2027
Additional Truck Trips	0	0	39,876	61,120	63,000	63,000	63,000	63,000	63,000	63,000
Additional Ton-miles	0	0	48,846,188	78,393,987	78,780,000	78,750,000	78,780,000	78,780,000	78,780,000	78,780,000
Additional Tons Nox	0	0	36	48			35			
Additional Fuel Consumption (gal.)	0	0	943,003	969,899	1,016,876	1,016,876	1,016,876	1,016,876	1,016,876	1,016,876

	2006	2007	2008	2009	2010	2011	2012
Nox Emissions (g/ton-mile)							
Truck	1.8		1		0.8		0.86
Rail	0.7		0.39		0.26		0.26

Fuel Consumption per Ton-mile	
Truck	0.0179
Rail	0.0080

Additional Shipper Costs

# Central Oregon & Pacific Track Project Impact Analysis

	2009	2007	2008	2009	2010	2011	2012	2013	2027
Additional Leased Truck Taps	0	0	19,938	30,000	\$1,000	\$1,000	\$1,500	\$1,000	\$1,000
Additional Shipper Costs	0	0	\$11,074,054	\$16,863,081	\$17,402,400	\$17,402,400	\$17,402,400	\$17,402,400	\$17,402,400
10 Year									
Total Adnl Shipper Costs					\$149,714,816				
Avg. Per Year					\$14,971,482				
20 Year									
Total Adnl Shipper Costs					\$341,141,216				
Avg. Per Year					\$17,057,061				

Roseburg to LA Basin  
 Rail Rate (HC CB Cor)  
 Truck Mileage  
 Truck Rate Per Mile  
 Total Truck Rate

	\$1,000.00
--	------------

	Region 2	Region 3	Total	
Grant	\$ 1,477,492	59.4% \$ 5,878,270	\$ 7,353,762	59.4%
Match	\$ 1,009,768	40.6% \$ 4,016,044	\$ 5,025,812	40.6%
	\$ 2,487,260	\$ 9,892,314	\$ 12,379,574	
			0 683434139	

As CORP alters their application to indicate how much of their grant is for Region 2, and how much is for Region 3, they need to indicate how much of their match will be for each region. The numbers above would maintain their declared 40.6% match, evenly split across the two Regions

**CONNECTOREGON  
TRANSMITTAL COVER SHEET**

APPLICATION #: 014-06 DATE RECEIVED: 2/15/06

APPLICANT NAME: Central Oregon & Pacific Railroad Inc.

TELEPHONE: 541-957-2512 FAX: 541-957-0686

CO-APPLICANT: N/A

TELEPHONE: N/A FAX: N/A

PROJECT MODE: AIR  MARINE  RAIL  TRANSIT

PROJECT NAME: Central Oregon & Pacific Railroad main line track improvements;  
Siskiyou, Roseburg, & Coos Bay Subdivisions

COMPLETENESS REVIEWER: Cary Goodman PASS  FAIL

ADDITIONAL INFORMATION REQUESTED: Steve Hefley 2/22/06

CONTACT DATE

Left a voicemail asking for a map for their project. Also asked Steve to call and tell me whether any of the project is in Lane County (Connect Oregon Region 2) or if it is all Region 3.

Project is split across Regions 2 & 3. CORP sent map & spreadsheet on 2/27; I forwarded them to Sorin on 2/28. I also asked CORP to revise & resubmit their application so as to show corrected #'s and how much of their grant request is for Region 2 and how much is for Region 3.

CORP submitted revised electronic appl on 3/7 & paper on 3/8. Minor changes rcvd 3/9.

Steve.Hefley@railamerica.com

Email Address

N/A - project is spread over 191 miles of RR track

Geographic Locator

ADDITIONAL INFORMATION RECEIVED: numerous numerous  
CONTACT DATE

APPLICATION EMAILED TO  
SORIN GARBER CONSULTING GROUP  
SENDER'S INITIALS DATE

~~NO CONFLICT OF INTEREST CERTIFICATION~~  
I do not have any conflict of interest with the proposer submitting this project application. A conflict of interest may include any family members presently associated with a proposer, or any financial relationships with a proposer (does not include past employment) I have read and rated the project application independently, and without interference or pressure from anyone I have not had conversation or other contact with the proposer concerning this project application since it was issued. I have noted any potential conflicts or concerns on this form "

FEASIBILITY EVALUATOR SIGNATURE:

DATE: \_\_\_\_\_

Signed, No Conflict of Interest Certification received from SGCG: \_\_\_\_\_

**ConnectOregon  
FEASIBILITY REVIEW CHECK-OFF LIST**

Application # 014-06  
Applicant Name Central Oregon and Pacific Railroad (CORP)  
Co-Applicant  
Project Name Upgrade of CORP mainlines  
Mode Rail Freight ConnectOregon Region 2 & 3 Reviewer's Name Ed Immel

**No Conflict of Interest Certification:** I do not have any conflict of interest with the proposer submitting this project application. A conflict of interest may include any family members presently associated with a proposer, or any financial relationships with a proposer (does not include past employment). I have read and rated the project application independently, and without interference or pressure from anyone. I have not had conversation or other contact with the proposer concerning this project application since it was issued. I have noted any potential conflicts or concerns on this form "

**FEASIBILITY EVALUATOR SIGNATURE:**



DATE: 3/15/2006

**Reviewer's Feasibility Report**

- 1 Is project technically feasible? Yes  No
2. CO 5 Request \$7,353,762  
X Grant \$7,353,762  Loan \$ \_\_\_\_\_ X Total Project \$12,379,574  
REGION 2 REQUEST. \$1,477,492 CO GRANT + \$1,009,768 In Match = \$2,487,260  
REGION 3 REQUEST \$5,876,270 CO GRANT + \$4,016,044 In Match = \$9,892,314
3. Is the budget estimate complete?  
Yes  No  Design Yes  No  Proj Mgmt. Yes  No  Construction Yes  No   
Contingencies Yes  No   
Please Explain: Track rehabilitation projects normally do not require any design The application does not breakdown project management as a separate cost item nor did it contain any contingencies It would appear that given the large percentage of local match (40.6%) the applicant is willing to bear any cost over runs
- 4 If budget estimate information is complete, does the cost estimate appear reasonable?  
 Design \$ \_\_\_\_\_  Proj Mgmt \$ \_\_\_\_\_  Construction  Contingencies Yes  No   
Please Explain See comments on design, project management and contingencies in #3 above
5. Is timeline in relation to tasks not yet completed feasible? Yes  No
6. Are there any elements of the project that could cause unanticipated delays? Yes  No

**[Insert other review comments here]**

*The purpose of this project is to upgrade track to be able to accommodate 286,000 lb rail cars*

*The project could be done in phases or to a reduced scope if there was a shortfall in funding.*

Signature of Reviewer

Report Approval



3/15/2006

3/16/2006

Date

Sorin Garber

Date



U.S. Department  
of Transportation

Federal Railroad  
Administration

# Memorandum

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**Date:** April 11, 2005 **Reply to Attn. of:** CORP

**Subject:** Central Oregon & Pacific Railroad  
Focused Team Inspection

**From:** Steve E. Jasso  
Safety Inspector (Track)  
Spokane, WA.

**To:** David W. Brooks  
Regional Administrator  
Region 8, Vancouver, WA

**Inspection:**

Between March 28, 2005, and April 7, 2005, the Federal Railroad Administration (FRA) conducted a series of main track inspections on Central Oregon and Pacific Railroad's (CORP) three subdivisions. The subdivisions were Roseburg between Springfield Jct and Medford, Oregon, (OR), Siskiyou between Medford OR, and the California state line, and Coos Bay between Eugene, and Coos Bay, OR. The inspections were conducted by a team of FRA and State of Oregon track inspectors. Approximately 330 miles of track and 123 turnouts were inspected. A total of 564 defects were documented including 20 which were recommended for violations. The inspections were coordinated to address various areas of concerns with an emphasis on monitoring the railroads inspection and remedial action procedures.

**Roseburg Subdivision:**

From April 3, 2005, to April 7, 2005, FRA and State of Oregon track inspectors conducted ten main track inspections at selected areas between Medford MP 442.7 and Springfield Jct MP 644.3 on the Roseburg subdivision. The inspections were conducted by hi-rail and walking. During the inspections the inspectors were accompanied by CORP Track Supervisors John Gomez, Steve Patton, and Machine Operator Glen Kilgore.

Approximately 147 track miles were inspected including three miles of yard track and 144 miles of main track. Sixty seven main track turnouts, eight yard turnouts, and seven derails were also inspected. Seventeen roadway worker efficiency test were conducted. Sixty seven main track miles were inspected by walking and 77 were inspected by hi-rail. The inspectors documented a total of 361 noncompliance conditions including 18 which were recommended for violations. Defects documented and violations recommended are listed below

Defective and cross tie distribution defects --	152
Defective joint ties -----	52
Center cracked or broken joint bars -----	32
Various turnout defects -----	32
Missing bolts on conventional rail -----	21
Failure to comply with CWR procedures ---	14
Fouled ballast -----	13
Defective rail -----	11
Wide gage -----	7
Deviation from zero crosslevel -----	5
Drainage defects -----	5
Loose joint bars -----	4
Missing bolts CWR -----	3
Roadway worker noncompliance -----	3
Surface warps (twist) -----	2
Tight gage -----	2
Insufficient rail fasteners -----	1
Rail end pull apart (Conv.)-----	1
Severe frog condition -----	1
<b>Total Defects -----</b>	<b>361</b>

Violations were recommended for:

Defective joint ties -----	7
Wide gage -----	6
Defective ties and distribution -----	3
Center broken joint bars -----	2
<b>Total Violations -----</b>	<b>18</b>

Main and yard track walked	70
Main track hi-rail:	77
Total track miles inspected:	147
<b>Total defects noted:</b>	<b>361</b>
	<b>2.5 defect per mile</b>

Miles walked:	70
<b>Defects noted by walking</b>	<b>349</b>
	<b>5.0 defect per mile</b>

**Concerns:**

An overall poor cross tie condition was noted on various curve and tangent locations. Numerous defective tie clusters with elongated spike holes on conventional and continuous welded rail (CWR) curves are not holding spikes nor gage. Defective ties on tangents and specifically at joint locations not capable of holding zero crosslevel are causing cracked, broken, or loose joint bars. Fifty two defective joint tie locations and 32 center cracked or broken joint bar defects were noted on this inspection.

Also noted were fourteen locations with missing or loose anchors on CWR. Existing CWR rail joints are not being box anchored per CORP's CWR written procedures.

On April 6, 2005, three roadway worker defects were documented. The defects were for roadway worker fouling a track without ascertaining that provisions were made for on-track safety (OTS). The roadway worker was observed wearing no high visibility or reflective wear while fouling the track and wearing no hard hat.

**Siskiyou Subdivision:**

On April 4, 2005, FRA conducted a main track and yard inspection between the Oregon/California state line at MP 401 80, and Medford, OR, MP 441 80, on the Siskiyou subdivision. The inspection was conducted by hi-rail and walking. The inspector was accompanied by CORP Track Supervisor Rich Padula.

Approximately 42 track miles were inspected including one mile of yard track and 41 miles of main track. Twenty main track turnouts, 13 yard turnouts, and six derails were also inspected. Two roadway worker efficiency test were conducted. Five main track miles were inspected by walking, 36 were inspected by hi-rail. The inspector documented a total of seven noncompliance conditions. None were recommended for violations. Defects documented are listed below:

Defective and crosstie distribution defects --	4
Defective joint ties -----	1
Defective rail -----	1
Turnout defects -----	1
<b>Total Defects -----</b>	<b>7</b>

Main and yard track walked:	6
Main track hi-rail.	36
Total track miles inspected:	42
Total defects noted:	7
	<b>0.2 defect per mile</b>

Miles walked:	6
Defects noted by walking	7
	<b>1.16 defect per mile</b>

**Concerns:**

Several curve locations including Curve 433 with marginal and hollow cross ties will need to be monitored when rail traffic resumes. Tunnel 13 was not inspected due to contractors working.

**Coos Bay Subdivision:**

From March 28, 2005, to April 5, 2005, State of Oregon Track Inspectors conducted eight main track inspections at selected areas between Eugene MP 652 0, and Coos Bay, OR, MP 769 0, on the Coos Bay subdivision. The inspections were conducted by hi-rail and walking. During the inspections the inspectors were accompanied by CORP Track Supervisors Duke Rodley and Shaun Shankle.

Approximately 141 track miles were inspected including seven miles of yard track and 134 miles of main track. Forty three main track turnouts, 11 yard turnouts, and nine derails were also inspected. Nine roadway worker efficiency test were conducted. Twenty three main track miles were inspected by walking and 111 were inspected by hi-rail. The inspectors documented a total of 196 noncompliance conditions including two which were recommended for violations. Defects

documented and violations recommended are listed below:

Loose joint bars -----	65
Various turnout defects -----	34
Missing bolts on conventional rail -----	19
Defective joint ties -----	17
Drainage defects -----	12
Vegetation defects -- -----	11
Center cracked or broken joint bars -----	9
Insufficient rail fasteners -----	8
Defective and crosstie distribution defects --	6
Fouled ballast -----	4
Defective rail -----	4
Improper joint design -----	3
Deviation from zero crosslevel -----	2
Failure to comply with CWR procedures --	1
Rail end pull apart (Conv.)-----	1
<b>Total Defects -----</b>	<b>196</b>

Violations were recommended for:

Defective joint ties -----	1
Center broken joint bars -----	1
<b>Total Violations -----</b>	<b>2</b>

Main and yard track walked:	30
Main track hi-rail.	111
Total track miles inspected:	141
<b>Total defects noted:</b>	<b>196</b>
	<b>1.4 defect per mile</b>

Miles walked.	30
<b>Defects noted by walking</b>	<b>169</b>
	<b>5.6 defect per mile</b>

**Concerns:**

Overall poor drainage and mud are causing rail joint defective conditions including fouled ballast, loose joint bars, missing bolts, defective joint ties, center cracked or broken joint bars, accompanied by incipient crosslevel, warp, and gage. Defective ties, specifically at joint locations are not capable of holding zero crosslevel causing loose, cracked, or broken joint bars. The inspections noted sixty five loose joint bars, 17 defective joint tie locations, and nine center cracked or broken joint bars. This totaled to 91 rail joint defects which are to many defects for any class of track. Many of these conditions with incipient crossties and measurements were documented as being marginal for posted or existing speed restrictions.

An FRA records inspection of CORP's track inspection records for the Coos Bay subdivision was conducted on April 1, 2005, at CORP headquarters Roseburg, OR. A total of 43 track records were inspected and six defects were noted and documented. The defects were all for failure of inspector to provide the required information. One noted inspection record failed to reflect the actual

conditions of the track, two noted improper remedial action before trains, and three were for failure to identify class or location of track inspected.

**Background:**

In September, 2003, FRA conducted a series of main track inspections on CORP's three subdivisions. The four day inspection was conducted by a team of FRA and State of Oregon track inspectors. Inspectors documented a total of 390 noncompliant conditions including seven which were recommended for violations. Deviations found were 100 rail joint defects which included loose missing bolts, loose joint bars and center cracked or broken joint bars. Other defects consisted of 78 crosstie defects, 24 geometry, 56 vegetation, 16 defective rails and 116 various other defects as documented below.

Track Safety Inspectors, Arnes, Jasso, Page, Mathews, Blaylock, Hasbrouck			
Railroad Central Oregon and Pacific Railroad			
9/26/2003	Description	Exceptions	Violation Total
	Rail Joints	100	100 C/C-bolts-
	Ties	78	78 Joint tie/distribution
	Vegetation	56	1 57 Rolling stock/Toe paths/Structure
	Turnouts	55	55 Various
	Frogs	11	11 Holddown, etc.
	Defective Rail	16	16 VSH/Split web/Ordinary/etc.
	Surface	15	15 Various
	Switches	14	14 Various
	CWR	8	8 Permanent joints, etc Anchoring
	Gage	8	1 9 Wide
	Fouled Ballast	1	1
	Fastener 39'	2	2
	Drainage	2	2
	Guard rails	1	1
	ROR GCOR 8 0	3	3 Switches
	Rail End Mis M	2	2
	RWP	11	5 16 EIC/Contractor/Piggy back
<b>Total</b>		<b>383</b>	<b>7 390</b>

CORP-Approximately 389 miles Hy-railed/Walked

In January, 2005, FRA conducted a series of main track inspections on CORP's three subdivisions. The four day inspection was conducted by a team of FRA and State of Oregon track inspectors. Inspectors documented a total of 488 noncompliant conditions including eight which were recommended for violations. Deviations found included; 170 center cracked or broken joint bars, 128 rail joints with loose or missing bolts, 54 crossties defects, 15 geometry, 16 defective rails and 105 various other defects as documented below:

Track Safety Inspectors: Hasbrouck, Page, Blaylock, Arnes				
Railroad Central Oregon & Pacific Railroad				
1/28/05	Description	Exc epti	Viola tion	Total

	ons		
Rail Joints	296	2	298 C/C-joint bars- (Total 170)
Ties	51	3	54 Joint tie/distribution
Vegetation	8		8 Rolling stock/Toe 8 Paths/Structure
Turnouts	31		31 Various
Frogs	4		4 Holdown, etc.
Defective Rail	15	1	16 VSH/Split web/Ordinary/etc.
Surface	5	1	6 Various
Switches	45		45 Various
CWR	1		1 Permanent joints, etc.
Gage	9		8 Anchozing 8 Wide
Fouled Ballast			
Fastener 39'	2		2
Drainage	8		8
Guard rails			
Remedial Action	1	1	2 Crossties
Rail End Mis Mat	1		1
RWP	3		3 EIC/Contractor/Piggy back
<b>Total</b>	<b>480</b>	<b>8</b>	<b>488</b>
<b>Approximately 381 miles Hy-ralled/Walked</b>			

A total of 298 rail joint defective conditions were documented by the FRA inspectors in January, 2005. This is an increase of 198 more defects when compared with the total of 100 rail joint defects documented by FRA in September of 2003. It was evident by the number of defects found and documented by FRA that CORP inspectors were not documenting all defects or applying proper remedial action.

On January 28, 2005, FRA's Region 8 track specialist accompanied by federal and state track inspectors, met with CORP management to discuss concern over these conditions and to ascertain CORP had a plan for improvement. FRA required an immediate, effective and verifiable written "Action Plan" that would bring CORP's track into compliance with the Federal Track Safety Standards.

Rail America Chief Engineer Western Corridor Mark Bader submitted a written "Action Plan" to Region 8 Regional Administrator, David W Brooks on February 3, 2005. The plan stated track inspection personal would be increased from 3 to 4 inspectors thus effectively giving each inspector approximately 100 miles of territory CORP inspectors would be required to walk and document at least 5 miles of their territory monthly to assure the entire territory was covered on an annual basis. Also they would be required to walk at least 2 miles of the 90# rail on their territory each week until the joint defects were reduced to a maintenance level CORP inspectors would document all defects, make repairs prior to a

train or initiate the proper remedial action for the deviation found. The plan included quality track inspections to address joint bar defects and other rail maintenance concerns.

Forty one center cracked or broken joint bar defects noted by FRA on this inspection are 129 less than the 170 noted in January 2005. The walking inspections mandated by CORP railroad are responsible for this reduction but overall on this inspection, joint defects including joint bars, joint ties, and missing bolts totaled 228. This is still too many defects for safe train operations on any class track. It is obvious the railroad hasn't made much progress in addressing all rail joint defects during this period.

**Conclusion:**

Concern on all subdivisions begins with deteriorating poor cross ties conditions on tangents and curves, poor drainage with fouled muddy ballast, rail joint defects, excessive gage, defective rails, failure to comply with CWR procedures, on-track safety, and lack of resources for proper inspection and maintenance. A total of 67 turnout defects were also documented indicating poor turnout maintenance.

Many locations on all subdivisions have numerous defective tie clusters bordering on fewer than minimum allowable number of non-defective ties per 39 feet defect. They are being noted on both CWR and conventional rail. Numerous defective and deteriorating tie clusters with elongated spike holes on CWR and conventional rail curves are not holding track spikes or gage. On most curves the few remaining good cross ties are doing the bulk of the work. Because of the extra strain experienced by these isolated good ties they will continue to deteriorate faster than necessary further accelerating wide gage concerns. Many of these tie locations have incipient FRA measurements and are documented as being marginal for posted or existing speed restrictions. Too many of these locations exist making it very difficult if not impossible for the railroad track inspector to keep up with the gage.

Defective tie clusters on tangents, specifically at joint locations with battered rail ends are not holding zero cross level causing cracked, broken, or loose joint bars. Battered rail ends will continue to accelerate cross tie deterioration allowing for defective joint tie defects, excessive cross level, center cracked or broken joint bars, loose missing bolts, and possible defective rails. Although railroad inspectors are now walking track to eliminate cracked or broken joint bars they still have too much territory and not enough resources to reduce joint defects to a maintenance level.

Many locations with missing anchors or anchors not properly set against the cross ties were noted on CWR track. Numerous cross ties at rail joints were not box anchored per CORP's CWR written procedures. CWR to conventional rail transition joints are especially being overlooked. Improperly installed or missing anchors combined with poor cross tie conditions are track buckles waiting to happen.

Overall CORP's track structure needs major improvements and resources to handle its traffic at Class 2 speeds. Inspections with more restrictive remedial action need to be conducted. Problematic track should be protected with further speed reductions or excepted track should be considered.

On April 6, 2005, three roadway worker defects were noted and documented. One was for the roadway worker fouling a track without ascertaining that a provision was made for on-track safety (OTS). The same roadway worker was observed wearing no high visibility or reflective outer wear while fouling the track. The employee was observed wearing no hard hat thus not being in compliance with CORP's required personal protective equipment (PPE) safety rules. During the inspection FRA noted other CORP employees ignorant of, or not properly trained on certain roadway worker OTS regulations. FRA needs to continue to focus on employee knowledge and compliance of OTS and railroad safety rules.

On Thursday, April 7, FRA Inspectors S. E. Jasso, A. J. Moler, and Oregon State Inspector Tim Blaylock held a meeting with CORP General Manager (GM) Dan Lovelady at CORP headquarters in Roseburg OR.

The inspectors stated FRA expects quality track inspections to be conducted and proper remedial action to be taken. The inspectors further explained both are necessary and when practiced both will accomplish good results. Results like proper remedial action will protect trains, employees, environment, and the public from unnecessary derailments. Remedial action will focus immediate attention to serious problems for the benefit of top management and the company. Remedial action will allow the railroad to operate safely and legally with minimal interference from FRA or other regulatory agencies.

GM Dan Lovelady's positive response acknowledged FRA's concern with safety. He agreed track conditions, quality of inspections, lack of proper remedial action, employee on-track safety, and training in general need to be improved. He offered no excuses and stated headquarters in Texas might finally be waking up.

Recommend FRA continue to conduct frequent team inspections, focusing on all aspects of the FRA regulations.

CC J. O. Adams  
M Sanders  
M Daniels



**Memorandum**  
U.S. Department  
of Transportation

**Federal Railroad  
Administration**

**Date: June 27, 2005**

**Reply to Attn of**

**Subject: CORP Focused Inspection**

**Fr: Rick Hasbrouck**  
Track Safety Inspector  
Vancouver, WA.  
**To: James Adams**  
Track Specialist  
Vancouver WA

On June 20, 21 and 22, 2005, Federal Track Safety Inspectors, Jasso and Hasbrouck conducted a follow-up walking and hi-railing track inspection on the Central Oregon and Pacific Railroad's (CORP) Roseburg subdivision between Glendale and Roseburg, Oregon. See attached defect summary.

This inspection was conducted subsequent to a prior focused inspection in which many non-compliant conditions were recorded. Also, we were concerned because of a substantial increase in reportable track caused derailments in the last 18 months on the CORP.

During this project, we inspected 80 main and yard track miles inspected that included 162 units

We recorded 291 defective conditions, of which 9 were recommended for civil penalties for non-compliant wide gage, surface, crosstie, track records and switch conditions.

We also placed a Special Notice of Repairs (SNFR) on 2.5 miles of main track, which runs through a populated area of Dillard, Oregon. This enforcement tool was utilized due to prior non-compliant track conditions noted in the same area, and CORP's failure to maintain this portion of track for the posted timetable speed of Class 2 track.

Between March 28 and April 7, 2005, FRA and ODOT inspectors inspected approximately 330 miles of main and yard track. A total of 564 defects were documented including 20, which were recommended for violations.

In January 2005, FRA and ODOT conducted a series of main and yard track inspections. Inspectors

documented a total of 488 noncompliant conditions including 8 that were recommended for violations. About 381 miles of main and yard tracks were inspected during this inspection

Again, in September 2003, FRA and ODOT conducted a series of main track inspections. Inspectors documented a total of 390 noncompliant conditions including 7 that were recommended for violations

At the conclusion of the focused inspection on June 24 2005, we met with CORP General Manager, Dan Lovelady to discuss the noncompliant conditions discovered by inspectors

We expressed again the need for CORP to initiate proper remedial action to all non-compliant conditions and the lack of quality inspections being performed between Roseburg and Riddle.

Mr. Lovelady thought the CORP was making some positive headway because the Siskiyou tunnel had reopened after an almost 1 year closure due to a fire and collapse in the tunnel. While we agree that some of the past non-compliant condition areas had improved, these same areas were again at a point not meeting the class at which it is posted in timetable or general order.

The CORP continues to install second hand ties which is a short time fix for surface and gage conditions, but as inspectors discovered during this inspection, several of the curves where ties had been installed in the last year or two are already showing open and non-compliant gage conditions.

In summary, the CORP has limited resources to maintain and repair their track to the class at which it is posted. Stronger enforcement tools should be used in the future, such as Compliance Agreements, Special Notice of Repairs and Civil Penalties.

It is evident from past inspections that very little progress is being made when comparing the miles of track and defective conditions being discovered and recorded by FRA and ODOT inspectors

I recommend that the CORP be placed into a Compliance Agreement along with stronger enforcement towards the noncompliant track and roadway worker protection conditions recorded during the past inspections with more recommended civil penalty's and or individual liability enforcement and SNFR's placed were we continually find areas of track that cannot be maintained for the posted class of track that it is being operated at

CC: Brooks, Sanders, Daniels

Date- 6-05		Railroad- CORP		Sub- ROSEBURG		Yard-		Total Units	
Inspector- HASBROUCK/JASSO		Railroad representative-		YTH		TOY		DER	
RWP	RMIM	MTW	MTW	TOM	45	3	3	220	2170
9	52	38					1	3	
BWK	HGCT	LRA	RXM	RXY	TGMS	TREC	TRM		162
							5		
Defects									
CFR	121 05	RAIL JOINTS		Defect	58	Violation		LESS THAN 2 BOLTS PER RAIL END IN CLASS 2 TRACK	
CFR	121 03	RAIL JOINTS		Defect	53	Violation		CENTER CRACKED ANGLE BARS	
CFR	109 02	CROSSTIES		Defect	36	Violation		3 JOINT TIES	
CFR	109 03	CROSSTIES		Defect	22	Violation		NOT EFFECTIVELY DISTRIBUTED	
CFR	103 02	BALLAST		Defect	17	Violation		FOULED	
CFR	109 04	CROSSTIES		Defect	15	Violation		DEFECTIVE TIES IN 39'	
CFR	53 03	TRACK GEOMETRY		Defect	6	Violation		3 WIDW GAGE 8 ON MAIN TRACK AND 1 IN YARD TRACK	
CFR	63 05	TRACK GEOMETRY		Defect	7	Violation		1 CROSSLEVEL	
CFR	119 02	CWR		Defect	6	Violation		ANCHORING	
CFR	135 05	SWITCHES		Defect	5	Violation		LATERAL OR VERTICAL SWITCH POINT MOVEMENT	
CFR	133 12	SWITCHES		Defect	5	Violation		LOOSE FROG BOLTS	
CFR	137 03	FROGS		Defect	4	Violation		TREAD WEAR LESS THAN ALLOWABLE	
CFR	113 07	DEFECTIVE RAIL		Defect	4	Violation		BOLT-HOLE CRACK	

CFR 109 05	CROSSTIES	Defect 4	Violation 4	DEFECTIVE TIES IN 39' IN TURNOUTS
CFR 135 08	SWITCHES	Defect 3	Violation 3	HEEL OF SWITCH INSECURE
CFR 127 01	FASTENERS	Defect 3	Violation 3	INSUFFICIENT
CFR 220	RADIO PROCEDURES	Defect 3	Violation 3	NO NAME OR INITIALS OR OVER AND OUTS
CFR 63 08	TRACK GEOMETRY	Defect 2	Violation 2	DIFFERENCE IN CROSSLEVEL TANGENT
CFR 63 07	TRACK GEOMETRY	Defect 2	Violation 2	DIFFERENCE IN CROSSLEVEL CURVES
CFR 33 01	DRAINAGE	Defect 2	Violation 2	NOT MAINTAINED
CFR 135 03	SWITCHES	Defect 2	Violation 2	IMPROPER SWITCH POINT FIT
CFR 133 07	TURNOUTS	Defect 2	Violation 2	COTTER PINS
CFR 113 12	DEFECTIVE RAIL	Defect 2	Violation 2	ORDINARY BREAK
CFR 37 02	VEGETATION	Defect 1	Violation 1	SIGNAGE
CFR 33 03	DRAINAGE	Defect 1	Violation 1	BLOCKED
CFR 313 03	DEFECTIVE RAIL	Defect 1	Violation 1	HORIZONTAL SPLIT HEAD
CFR 241 06	TRACK RECORDS	Defect 1	Violation 1	FAILURE TO PROVIDE
CFR 205 05	DERAILS	Defect 1	Violation 1	IMPROPERLY INSTALLED
CFR 135 12	SWITCHES	Defect 1	Violation 1	IMPROPER CLOSE OF SWITCH POINT
CFR 135 11	SWITCHES	Defect 1	Violation 1	WORN CAUSING WIDE GAGE
CFR 135 01	SWITCHES	Defect 1	Violation 1	STOCK RAIL NOT SEATED



**Safety Compliance Agreement  
between the Central Oregon & Pacific Railroad, Inc. (CORP) and  
the Federal Railroad Administration  
concerning Track Conditions**

**I. Background**

The Central Oregon & Pacific Railroad, Inc. (CORP), a railroad carrier held by RailAmerica, Inc., is subject to the jurisdiction of the Federal Railroad Administration ("FRA") of the United States Department of Transportation. See 49 U.S.C. § 20102, 20103; 49 C.F.R. Part 209, Appendix A. CORP currently owns or leases, and operates 470 miles of track in Oregon and California. From Eugene, Oregon, CORP's trackage extends west to the coast of Coos Bay, Oregon and then south to Coquille, Oregon. The trackage also extends south from Eugene, Oregon to Black Butte, California.

According to FRA's records, since 1998, FRA and State inspectors have inspected the equivalent of about 1,000 track miles on CORP main and yard tracks. The inspectors recorded more than 4,067 noncompliant track conditions, which included 171 gage defects, 704 defective crosstie conditions, 167 defective rails and 1,224 defective rail joint conditions. Of these defects, 78 were recommended for civil penalties. In 2003, FRA's T-2000 automated track geometry car surveyed about 300 miles of main track between Black Butte, California, and Eugene, Oregon and recorded about 400 defective surface and gage conditions that are not included in the above totals. In addition, between the years 2004 and 2005, there have been at least seven derailments on CORP territory that FRA believes to have been track-caused (three by defective rails, two by wide gage, and two by worn switch points). There is an ongoing investigation of the cause of an eighth derailment that FRA thinks was probably also track-caused.

In June of 2005, FRA completed an assessment of the CORP's compliance with the Federal Track Safety Standards ("Track Safety Standards"), 49 C.F.R. Part 213 ("Part 213"), which, FRA believes, revealed continued noncompliance with many of these regulations, creating a significant risk to the health and safety of railroad employees and the general public. FRA found several systemic deficiencies, including several gage, crosstie, and defective rail joint conditions. Based on these findings, FRA concluded that CORP track inspectors have not performed quality inspections, possibly due to lack of proper training, and that CORP had not provided enough oversight to ensure that inspections and recordkeeping were correctly done.

Accordingly, in order to ensure the CORP's future compliance with the Track Safety Standards, FRA and CORP, enter into this Safety Compliance Agreement ("Agreement") and agree to the terms and conditions set forth below.

**II. Track**

1. CORP shall develop and implement a track maintenance plan, which will include all remedial measures to be taken to eliminate systemic track defects under Part 213. The track maintenance plan shall include, at a minimum, the following provisions: (a) the number and type of inspections that will be conducted by CORP in order to reduce the number of center-cracked joint bars and joints with less than the minimum number of allowable bolts per rail at each joint, for conventional rail in classes 1 and 2 track; and (b) a program to eliminate wide gage and defective rails.
2. CORP shall provide its proposed track maintenance plan for the year 2005 to the Region 8 Administrator ("Regional Administrator") within 14 days after the effective date of this Agreement. Within 30 days of the submission of CORP's proposed track maintenance plan, FRA shall provide its response to CORP's proposed plan. FRA's response will indicate either its approval of the plan, approval of the plan with conditions and/or suggested amendments, or disapproval of the plan. If FRA disapproves the plan or approves the plan with conditions and/or suggested amendments, CORP must submit a revised plan to FRA within 14 days of FRA's response to the initial plan. Within 14 days after the date of submission of a revised plan, FRA will either approve or disapprove the plan. If FRA indicates its disapproval of the revised plan, FRA will terminate this Agreement and pursue other means of obtaining compliance. If FRA indicates its approval of the initial or revised plan, that plan will become effective upon CORP's receiving notice from FRA of such approval. Any failure to comply with that plan will be considered a violation of this Agreement. Should CORP desire to change the terms of the plan during the term of this Agreement, CORP shall request approval of any proposed change at least 30 days prior to the intended effective date of such change in the same manner as provided for above with regard to an initial plan.
3. CORP, within 60 days after full execution of this Agreement, shall also furnish FRA with its track maintenance plans and program for the work seasons of 2006 and 2007. FRA will then compare this information to similar data of work completed during the work seasons for the years 2004 and 2005, which shall be furnished to FRA by CORP within 30 days after full execution of this Agreement. The plans and programs must include the following information and requirements in addition of those found in Paragraph 1 of this Agreement: (a) the number of cross-ties installed or to be installed; (b) the location and extent of rail surfacing; (c) the location and extent of rail replacement; (d) the schedule for accomplishing the program; (e) the criteria used to determine the location and extent of tie renewal and rail replacement (e.g., traffic density, track inspection data, and accident history); (f) a requirement for walking inspections of all angle bars at least annually; and (g) the auditing of track inspection records to ensure that the records accurately reflect the conditions of the track. Within 30 days after the date of submission of CORP's proposed track maintenance plans and programs

for the 2006 and 2007 work seasons, FRA shall provide its response to CORP's proposed plan. FRA's response will indicate either its approval of the plan, approval of the plan with conditions and/or suggested amendments, or disapproval of the plan. If FRA disapproves the plan or approves the plan with conditions and/or suggested amendments, CORP must submit a revised plan to FRA within 30 days of FRA's response to the initial plan. FRA will either approve or disapprove the plan within 30 days from the date of submission of a revised plan. If FRA indicates its disapproval of the revised plan, FRA will terminate this Agreement and pursue other means of obtaining compliance. If FRA indicates its approval of the initial or revised plan, that plan will become effective upon CORP's notification of such approval. Any failure to comply with that plan will be considered a violation of this Agreement. Should CORP desire to change the terms of either plan during the term of this Agreement, CORP shall request approval of any proposed change at least 30 days prior to the intended effective date of such change in the same manner as provided for in Paragraph 2 above with regard to an initial plan.

4. Within 90 days after the full execution of this Agreement, CORP shall develop and implement a program to train employees on how to make inspections for compliance with the Track Safety Standards. The program shall contain the elements necessary to ensure that (a) its employees performing inspection, maintenance, and restoration work are qualified in accordance with the 49 C.F.R. § 213.7; and (b) that these employees possess the knowledge, skill, and other qualifications necessary to ensure the railroad's compliance with Part 213. CORP shall file a copy of its training program with the Regional Administrator within 30 days of the effective date of this Agreement. CORP shall implement its training program and commence training within 60 days from the date that the program is submitted to FRA. FRA regional track experts will participate in the training as deemed appropriate by the FRA and if and when requested by CORP.

Prior to the implementation of the training program, CORP shall provide FRA with the names of all employees designated by the railroad to be trained in accordance with the Track Safety Standards in 49 C.F.R. Part 213 and the locations where the training will be held, in order to allow FRA to monitor the initial training of those employees.

5. CORP shall file a monthly report with the Regional Administrator addressing the measures that CORP has taken in the previous month to reduce the number of: (a) center cracked joint bars; (b) less than allowable bolts per rail at each joint for conventional rail in classes 1 and 2 track; (c) defective rails, and (d) other non-complying track conditions, such as wide gage. The first report for the track maintenance plan shall be filed no later than 60 days after the effective date of this Agreement. Each succeeding report shall be filed no later than 30 days after the end of the month that is the subject of the report.

6. CORP shall provide a copy of all reports resulting from any track geometry inspections performed to the Regional Administrator within 14 days after the date of completion of the testing.
7. A CORP Roadmaster shall accompany each CORP track inspector across his or her entire assigned territory(s) quarterly to assess actual track conditions and to evaluate the track inspector's quality of inspections. The Roadmaster shall review each CORP track inspector's inspection record(s) once each quarter for compliance with the Track Safety Standards. The Roadmaster shall then submit a quarterly report directly to the Regional Administrator summarizing the results of these observations and review(s) of inspection records and addressing any further measures that may need to be taken to achieve compliance with the Track Safety Standards. The first report shall be filed with the Regional Administrator no later than 120 days from the effective date of this Agreement. Each succeeding report shall be filed no later than 30 days after the end of the quarter that is the subject of the report.
8. A RailAmerica Chief Engineer shall accompany a CORP Roadmaster on an inspection of each CORP subdivision every six months. The Chief Engineer shall also review the Roadmaster's record(s) and assessment in the field for compliance with the Track Safety Standards. The Chief Engineer shall submit a report to the Regional Administrator every six months summarizing the results of these observations and the review of records and addressing any further measures that may need to be taken to achieve compliance with the Track Safety Standards.

### III. FRA Enforcement Authority

FRA has extensive authority with which to enforce the Federal Railroad Safety Laws and Regulations ("safety laws"). FRA may (a) impose civil penalties on railroads, managers and employees (individuals may be liable for civil penalties under these laws and regulations only for willful violations); (b) disqualify an individual from performing safety-sensitive functions; (c) seek criminal penalties for willfully falsifying, destroying, or failing to complete records or reports that are required to be kept; or (d) seek the issuance of a preliminary and permanent injunction enjoining violations of the safety laws. Nothing in this Agreement in any way precludes FRA's use of this authority at any time.

### IV. Possible Issuance of a Compliance Order

FRA is entering into this Agreement with CORP as an alternative to the issuance of a compliance order against CORP for enforcement of 49 C.F.R. Part 213, based on facts detailed in Section I, Background, of this Agreement. FRA's restraint is contingent upon CORP's satisfaction of all terms in this Agreement. If, in the sole judgment of FRA, CORP fails to comply in full with any of the terms of this Agreement, FRA may, upon 48 hours' notice to CORP that the Agreement has been violated, issue a Compliance Order directing CORP to comply with the terms of this

Agreement. Section V, below, of this Agreement contains CORP's waiver of certain procedural rights and rights to contest such an order.

**V. Mutual Representations**

CORP makes the following representations:

(a) It has read and is familiar with all its obligations under this Agreement and agrees to comply in full with those obligations.

(b) It agrees that FRA has jurisdiction over it and authority to issue a compliance order in accordance with Section IV, above, of this Agreement, and it expressly consents to the issuance of a compliance order.

(c) It is familiar with the procedural regulations concerning issuance of compliance orders, found at 49 CFR Part 209 Subpart C, and agrees not to make procedural objections to any such compliance order issued pursuant to Section IV, above, of this Agreement; should FRA issue such a compliance order, it waives its rights to notice of investigation and formal hearing prior to the issuance of such compliance order.

(d) It agrees that FRA's determination that CORP has violated this agreement is within the agency's sole discretion and that it will not challenge this determination, and, if FRA issues a compliance order pursuant to Section IV, above, of this Agreement, it agrees not to seek administrative or judicial review of the determination to issue a compliance order, but reserves the right to contest factual allegations related to violations of any such compliance order once issued.

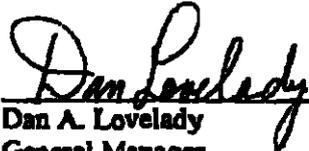
**VI. Notice**

The CORP shall, within five business days after the effective date of the Agreement, distribute a copy of the Agreement to each current management-level employee and to each such employee hired while the Agreement is in effect who is responsible for implementing any provision of the Agreement.

**VII. Effective Date and Duration of Agreement**

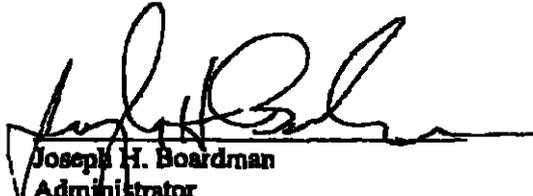
This Agreement is effective when fully executed, and shall remain in effect for at least two years after the execution of the Agreement. At the end of the initial 12-month period, FRA will assess CORP's progress in implementing the terms of specified in this Agreement, will meet with CORP to discuss that assessment. Based on that assessment and subsequent discussion, FRA will decide within 30 days, whether or not to terminate this Agreement and will report its determination to CORP. FRA's determination of whether or not to terminate this Agreement will be a matter of its sole discretion, and CORP will not challenge that determination. If FRA

determines that the agreement shall not be terminated, the agreement shall remain in effect for at least one year from the date of FRA's decision. In the event that FRA at any time during the period that this Agreement is in effect makes the determination that CORP has violated this Agreement and issues a compliance order, those sections of this Agreement addressing CORP's waiver of its right to contest the issuance of a compliance order against it shall remain in effect.

  
\_\_\_\_\_

Dan A. Lovelady  
General Manager  
Central Oregon & Pacific Railroad, Inc.

12/07/05  
Date

  
\_\_\_\_\_

Joseph H. Boardman  
Administrator  
Federal Railroad Administration

12/1/05  
Date

*SW*

**JOHNSON John R**

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**From:** MELBO Robert I  
**Sent:** Friday, January 19, 2007 10:27 AM  
**To:** HANUS Ann  
**Cc:** JOHNSON John R  
**Subject:** FW: Tunnel 18

Ann: An update on Central Oregon & Pacific's Coos Bay line While still working in Tunnel 15 (another three weeks or so of work yet before completion of that project), some problems have developed in Tunnel 18 further down the line So far, however, train service continues unimpeded

Bob Melbo  
ODOT Rail Division

-----Original Message-----

**From:** Hefley, Steve (CORP) [mailto:Steve.Hefley@rallamerica.com]  
**Sent:** Friday, January 19, 2007 10:03 AM  
**To:** MELBO Robert I  
**Cc:** Hawksworth, Thomas (CORP)  
**Subject:** RE: Tunnel 18

Bob, The Coos Bay line is in service, the contractor is working during the day, and we are running trains at night Tunnel #18, the contractor is working on over the week end, there is some timbers that they are strapping because the blocking toe has failed on five timber sets, we will have maintenance work in #18 when we get done in #15 Steve

---

**From:** MELBO Robert I [mailto:Robert.I.MELBO@odot.state.or.us]  
**Sent:** Friday, January 19, 2007 9:57 AM  
**To:** Hawksworth, Thomas (CORP); Hefley, Steve (CORP)  
**Subject:** Tunnel 18

Tom/Steve

Are you folks now experiencing problems with Tunnel 18? What's the current status of service on the Coos Bay line?

Bob Melbo  
ODOT Rail