

34915
SEA

SERVICE DATE - SEPTEMBER 10, 2004

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB DOCKET NO. AB-872X

Great Northwest Railroad, Inc.—Abandonment Exemption—in Clearwater County, ID

BACKGROUND

In this proceeding, Great Northwest Railroad, Inc. (GNR), filed a petition for exemption under 49 CFR 1152 seeking exemption from the requirements of 49 U.S.C. 10903 to abandon and discontinue service over a 27.5-mile line of railroad, extending from Milepost 3.5 at Orofino, to Milepost 31.0 near Jaype, in Clearwater County, Idaho. A map depicting the rail line in relationship to the area served is appended to the report. If the notice becomes effective, GNR will be able to salvage track, ties and other railroad appurtenances and dispose of the right-of-way.

DESCRIPTION OF THE LINE

GNR acquired the line from Camas Prairie RailNet, Inc., in February 2004. There is no overhead traffic on the line, which is stub-ended, and there has been no local traffic on the line since June 2001. Prior to June 2001, the line was used to transport logs and magnesium chloride. GNR states that it has not obtained adequate traffic commitments from potential customers to justify the expense of reopening and the line.

According to GNR, the line traverses a rural, mountainous area and the average width of the right-of-way is 100 feet. GNR states that both Orofino Creek and Quartz Creek are adjacent to the line, and the residential areas adjacent to or near the line include Orofino, Pierce, Jaype, Haley, Omill, Cow Creek, and Poorman.

According to GNR's Historic Report, there are 40 bridges on the line between Milepost 3.5 and Milepost 31.0.¹ These bridges range from 74 feet to 378 feet in length and are potentially 50 years old or older. Based on comments submitted by the Idaho Department of Lands (IDL), it appears that the bridges were built around 1920. Upon receiving abandonment authority, GNR intends to remove the rail, track material, and crossties. However, GNR has no plans to remove the bridges.

¹ As explained in GNR's petition filed on July 14, 2004, the railroad initially planned to also seek abandonment authority for the rail line located between Milepost 0.0 and Milepost 3.5. However, this segment has been removed from the scope of this abandonment request. Accordingly, the bridge located at Milepost 3.26 is not included in SEA's review.

ENVIRONMENTAL REVIEW

GNR submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. The applicant served the environmental and historical reports on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's environmental rules [49 CFR 1105.7(b)]. SEA has reviewed and investigated the record in this proceeding.

The National Geodetic Survey (NGS) has advised SEA that 24 geodetic station markers have been identified that may be affected by the proposed abandonment.

Because traffic has not moved on the subject rail line for more than two years, the proposed abandonment would not be expected to impact the development, use and transportation of energy resources or recyclable commodities, or result in the diversion of rail traffic to truck traffic that could result in impacts to air quality or the local transportation network.

The U.S. Army Corps of Engineers, Walla Walla District (USACE), advised that based on available information it is unable to determine if additional review is required by the USACE and recommended that GNR have a qualified wetland consultant inspect the project area. Accordingly, GNR shall consult with the USACE prior to commencement of any salvage activities to determine if permits are required under Section 404 of the Clean Water Act (33 U.S.C. 1344). GNR shall report the results of this consultation to SEA.

The United States Department of Agriculture, Natural Resources Conservation Service, stated that the proposed abandonment is not subject to the Farmland Protection Policy Act, since the proposed action would not convert existing or potential cropland to permanent non-agricultural use. Accordingly, no mitigation measures were suggested.

According to GNR, the line traverses the Clearwater National Forest. Accordingly, the Clearwater National Forest has been added to the service list.

The U.S. Environmental Protection Agency, Region 10 (EPA) states that the proposed abandonment appears to involve clearing, grading, and excavation activities that would disturb more than one acre of land in the area adjacent to Orofino and Quartz Creeks. According to the EPA, such activities are likely to result in the discharge of pollutants in storm water runoff from the disturbed areas, and the EPA believes that the proposed activity is subject to the permitting requirements of the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Federal Clean Water Act, which would require GNR to obtain a NPDES permit and develop a Storm Water Pollution Prevention Plan. The Idaho Department of Environmental Quality (IDEQ) made similar recommendations. To ensure compliance with NPDES permitting requirements, GNR shall contact the EPA (Misha Vakoc at 206-553-6650) and the IDEQ prior to commencement of any salvage activities.

The State of Idaho (State) has submitted comments on the proposed abandonment on behalf of the Department of Lands (IDL), the Idaho Department of Environmental Quality (IDEQ), and Idaho Department of Water Resources (IDWR). A portion of the line traverses land belonging to the State and managed by the Idaho Department of Lands (IDL), and that land would revert to the State if the line is abandoned.

The IDL and IDEQ expressed concerns regarding the deteriorating condition of the structures on the line and stated that the weakening of these structures could present a hazard to the integrity of Orofino Creek and its tributaries and public health and safety. According to the IDL and the IDEQ, a high water event at some point in the future could either cause the trestles to collapse or result in the accumulation of water, debris, and sediment behind the trestles, which could create flood conditions. IDL has requested that GNR remove any and all bridges, trestles, culverts, rails, ties, abutments, and concrete barriers from the portion of the right-of-way traversing State land. The IDEQ has requested that GNR remove any and all bridges, trestles, culverts, rails, ties, abutments, and concrete barriers from the right-of-way, whether or not such structures are located on land that would revert to the State upon abandonment.

Because GNR plans to remove rails and ties as part of salvage activities, we need only address the requests to require GNR to remove all bridges, trestles, culverts, abutments, and concrete barriers. The Board can impose reasonable conditions on the grant of abandonment authority to address concerns that have been raised regarding the anticipated impacts of the discontinuance of rail operations or the restoration of railroad property for non-rail use. However, the Board's authority to impose conditions is not limitless. See *Iowa Southern R. Co.—Exemption—Abandonment*, 5 I.C.C.2d 496 (1989), *aff'd*, *Goos v. I.C.C.*, 911 F.2d 1283 (8th Cir. 1990).

Any conditions imposed, including environmental mitigation, must be directly related to the abandonment before the Board for approval, must be reasonable, and must be supported by the record. The Board does not have authority to address environmental concerns that are not addressed to the abandonment. Additionally, the Board typically does not require the removal of bridges, because bridges can be an important component of railbanking lines approved for abandonment under an Offer of Financial Assistance or the Trails Act. As discussed below, it is possible that interim trail use/railbanking will occur on this line, in which case legal liability for the right-of-way and any structures would become the responsibility of the trail sponsor. Given the fact that there are 40 bridges on the line, the State has not demonstrated that each of the 40 bridges needs to be removed, and no specific support of a flood risk resulting from the abandonment is included in the State's submission, we do not consider a condition requiring the removal of all these structures to be reasonable in the circumstances presented.

Several railroad structures are situated in, over, or near Orofino Creek and its tributaries, over which the IDEQ and the Idaho Department of Water Resources (IDWR) have regulatory authority. The IDWR administers the Idaho Stream Protection Act and has expressed concerns regarding: 1) the removal of structures currently situated in Orofino Creek or its tributaries;

2) crossing Orofino creek or tributaries with equipment; 3) any activity that could introduce sediments into Orofino Creek or its tributaries; and 4) fisheries in Orofino Creek. The IDWR stated that, if salvage activities would affect land below the ordinary high water mark of Orofino Creek or its tributaries, GNR should comply with state and Federal regulations regarding permitting and protocol. Accordingly, we recommend that GNR consult with the IDWR regarding the potential need for any permits.

Because the proposed abandonment involves stream crossings and drainages with potential discharge to Orofino Creek and the Clearwater River, the IDEQ has expressed concerns² regarding water quality protection; the removal and salvage methods to be used by GNR during the proposed abandonment; sediment and erosion control; bridge and culvert maintenance; procedures to prevent leaching of wood preservatives from treated wood surfaces; procedures to identify and clean-up debris and contaminated areas; and a hazardous material contingency plan that includes IDEQ notification, in the event hazardous substances are discovered during salvage activities. The IDEQ is also concerned that certain state regulations, specifically Idaho's Water Quality Standards and Wastewater Treatment Requirements (Idaho Administrative Rules 50.01.02), would be violated if the structures collapse into the water and recommended that these structures be salvaged or maintained. In order to adequately address these concerns, we will recommend a consultation condition requiring that GNR contact IDEQ prior to commencement of any salvage activities.

There are no known hazardous waste sites or hazardous material spill sites on the subject right-of-way. According to GNR, the only derailments on the line have involved shipments of logs.

GNR states that the right-of-way may be suitable for public use, such as interim trail use/ railbanking, and upon receiving authority to abandon the line, GNR intends to rail bank the corridor pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). On August 10, 2004, the Board of Clearwater County Commissioners filed a formal request for the issuance of a public use condition and a request for interim trail use for the entire line. The IDL, IDEQ, and IDWR all have stated that their environmental concerns might be negated if an interim trail use arrangement is reached for the line. The requirements for public use and trail use are discussed below.

The 1995 Trails Act and the Board's Environmental Review

The Trails Act, 16 U.S.C. 1247(d), gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad right-of-way that otherwise would be abandoned. The Trails Act is intended to preserve railroad rights-of-way for future railroad use.

² In addition to the State's comments, the Lewiston Regional Office of the IDEQ submitted comments in a letter dated April 20, 2004. These comments are addressed together.

Under the Trails Act and the Board's implementing procedures (49 CFR 1152.29), a state or local government or private organization can request a trail condition (known as a Notice of Interim Trails Use (NITU)) to begin the trail use process on a line approved for abandonment if the trail sponsor agrees to railbanking and provides a statement of willingness to assume responsibility for managing the right-of-way, for any legal liability arising out of its use, and for the payment of taxes. If the railroad agrees to negotiate, and no offer of financial assistance to continue rail freight service on the line is received, the Board imposes a NITU, which gives the rail sponsor time to negotiate an agreement with the railroad for interim trail use/railbanking. The Board has no involvement in the negotiations and does not analyze, approve, or set the terms of trail use agreements. The Board is not authorized to regulate activities over the actual trail. In short, the Board's jurisdiction under the Trails Act is ministerial.

The Board does not conduct an environmental review of a potential conversion to interim rail use/railbanking because it does not exercise sufficient Federal control so as to qualify as a major Federal action under NEPA. Only major actions by Federal agencies require environmental review.

HISTORIC REVIEW

GNR submitted an historic report as required by the Surface Transportation Board's environmental rules [49 CFR 1105.8(a)] and served the report on the Idaho Historical Society (the State Historic Preservation Office or SHPO), pursuant to 49 CFR 1105.8(c). At the time this EA was prepared, the SHPO had not completed its assessment of the proposed abandonment. In letters dated June 10 and August 12, 2004, the SHPO requested archeological and historical surveys of the line. While the SHPO recommends a professional historical survey to formally document the trestles and any other historic properties along the line, the SHPO states that a reconnaissance-level archaeological survey would be adequate. Pending completion of the SHPO's review, we recommend a condition to ensure compliance with the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

The SHPO has indicated that a portion of the line may be located on the Nez Perce Indian Reservation and identified the Nez Perce Tribe as a potential consulting party to the Section 106 review process. Accordingly, SEA has informed the Nez Perce Tribe of the proposed abandonment and formally invited the tribe to be a consulting party in the Section 106 process of the NHPA.

CONDITIONS

SEA recommends that the following environmental conditions be placed on any decision granting abandonment authority:

1. The National Geodetic Survey (NGS) has identified 24 geodetic station markers that may be affected by the proposed abandonment. Therefore, GNR shall notify NGS at least 90 days prior to salvage activities in order to plan for their relocation.

2. Based on the comments of the U.S. Army Corps of Engineers, Walla Walla District (USACE), GNR shall consult with the USACE prior to commencement of any salvage activities to determine if permits are required under Section 404 of the Clean Water Act (33 U.S.C. 1344). GNR shall report the results of this consultation to SEA.
3. To ensure compliance with National Pollution Discharge Elimination System permitting requirements, GNR shall consult with the United States Environmental Protection Agency, Region 10 (Misha Vakoc at 206-553-6650), and the Idaho Department of Environmental Quality prior to commencements of any salvage activities.
4. GNR shall consult with the Idaho Department of Water Resources regarding protocol regulations and the potential need for any permits prior to commencement of salvage activities. GNR shall report the results of this consultation to SEA.
5. To address the concerns raised by Idaho Department of Environmental Quality (IDEQ), GNR shall, prior to commencement of any salvage activities, contact the IDEQ regarding water quality protection, specifically Idaho's Water Quality Standards and Wastewater Treatment Requirements under Idaho Administrative Rules 50.01.02; the removal and salvage methods to be used by GNR during the proposed abandonment; sediment and erosion control; bridge and culvert maintenance; procedures to prevent leaching of wood preservatives from treated wood surfaces; procedures to identify and clean-up debris and contaminated areas; and a hazardous material contingency plan that includes IDEQ notification, in the event hazardous substances are discovered during salvage activities. GNR shall report the results of this consultation to SEA.
6. GNR shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until the completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public

use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of the petition for exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this environmental assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Christa Dean, who prepared this environmental assessment. Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-872X in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this environmental assessment, please contact Christa Dean, the environmental contact for this case, by phone at (202) 565-1606, fax at (202) 565-9000, or e-mail at deanc@stb.dot.gov.

Date made available to the public: September 10, 2004.

Comment due date: October 11, 2004.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

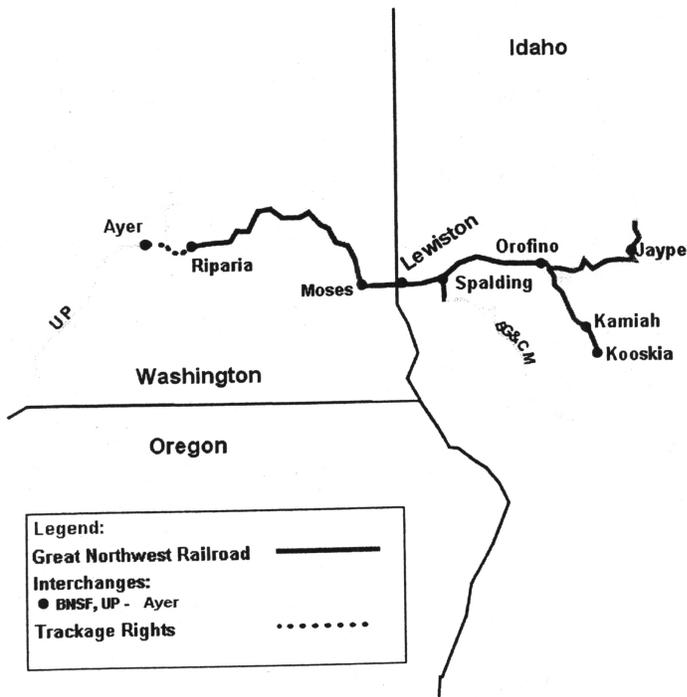
Vernon A. Williams

Secretary

Attachment



WATCO
COMPANIES, INC.
"Your Transportation Specialists"



AB-872X
ID-34915