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May 31, 2024

ENTERED
Office of Proceedings
June 3, 2024
Part of
Public Record

Hon. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.

Re: Snohomish County – Adverse Abandonment –
GNP RLY, Inc., in Snohomish County, WA, AB 1331

Dear Ms. Brown:

This letter is on behalf of Snohomish County (“County”), which filed the above-captioned application for abandonment. The County hereby apprises the Surface Transportation Board (“STB” or “Board”) of risks to the physical integrity of the rail line in question arising from the failure of the Board to issue a decision in the case in compliance with statutory and regulatory deadlines and federal rail policy.

Applicable statutes and regulations.

Under 49 C.F.R. 1152.26(a), a “decision on the merits” was due on February 4, 2024.¹ Under 49 U.S.C. 10904(d)(1), the Board is also required to allow abandonment or discontinuance “within 15 days after expiration of the 4-month period described in subsection (c) [unless an OFA was made].” Per subsection (c), the 4-month period commenced October 17, 2023, when the application was filed. The application was filed on October 17, 2023. See STB decision in AB 1331, served Nov. 6, 2023. The 4-month period thus expired no later than February 17, 2024. The proceeding is exempt from OFA. Section 10904(d)(1) on its face

¹ See discussion in Snohomish County’s “Reply Comments” filed December 18, 2023 in AB 1331, STB document number 307651.

therefore required an effective decision allowing abandonment no later than March 4, 2024.² Federal rail policy embodied at 49 U.S.C. 10101(15) provides that “[i]n regulating the railroad industry, it is the policy of the United States Government ... to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this Part [including rail abandonment proceedings].”

The relief (issuance of a “Certificate of Interim Trail Use” or “CITU”) sought by Snohomish County in this abandonment/railbanking proceeding is unopposed by any party, and most importantly is not opposed by the current holder of the exclusive freight rail easement on this corridor, GNP RLY (“GNP”), or by any shipper. The environmental process has been concluded. This case is ripe for a decision, and as indicated above, a decision is now overdue.

Physical integrity of the corridor threatened by delay.

By reason of this Board’s decision in Snohomish County, WA – Pet. Dec. Order, F.D. 35830, served March 5, 2015, and a recorded deed, the County is successor in interest to the Port of Seattle’s acquisition of the interests of BNSF in this rail line, except for an “exclusive rail easement” (which the County and GNP seek to “railbank” in this proceeding).

Circumstances have now developed demonstrating that the public interest is prejudiced by further delay in granting the CITU sought in this proceeding. A landowner adjoining the rail line in question requested the County to remove trees, or grant permission to the landowner to remove trees, from the rail corridor, purportedly to improve the landowner’s view of Mount Baker. County staff visited the relevant site, but declined to grant permission due, inter alia, to concerns of stability of the relatively steep slope involved. The landowner, without informing the County³, nonetheless cut (or caused to be cut) the trees and vegetation in the rail line corridor, not only in front of his home, but in front of several other homes.

² The referenced statutes and regulations on their face apply to all abandonment proceedings and do not except out so-called third-party abandonment proceedings.

³ GNP informs the County that the landowner did not seek GNP permission to remove any trees, or otherwise inform GNP of his intentions.

This has exposed the steep bank above the rail line to erosion. In addition, the landowner pitched (or caused to be pitched) the tree trunks, branches, and foliage debris into the rail line's drainage ditches and onto the trackbed. The County has expended substantial resources to remove the debris from the trackbed, but expects it will need the assistance of outside contractors to complete the removal of trunks and other debris blocking the drainage, and to stabilize and revegetate the steep slopes involved. The cost for such assistance is currently estimated at \$200,000. See Declaration of Sharon Swan, attached, para 5.

The County via Deputy Prosecuting Attorney Scott Marlow expressed concerns to the landowner involved. The landowner's attorney responded in a letter taking the position, incorrect in the County's view, that 1) the County has no interest in the corridor that is enforceable to protect the corridor due to the continued pendency of AB 1331; and 2) the County will not have an enforceable interest until the Board authorizes railbanking pursuant to the County's request (to which GNP has assented). Declaration, supra, para 6.

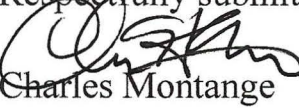
Snohomish County wishes to avoid further destructive actions by adjoining landowners in connection with the railroad property at issue. Such destructive actions are not in the public interest, and threaten the physical integrity of the rail line. Snohomish County also wishes to avoid unnecessary and costly litigation against trespassers who take the position they can lawfully do as they please to the rail property so long as STB has not yet issued a final decision in AB 1331 allowing railbanking.

Conclusion.

For the reasons stated above, Snohomish County accordingly requests the Board to facilitate the issuance of the relevant final decision for this proceeding (a Certificate of Interim Trail Use), as sought by the County (with GNP's consent).

By my signature below I certify service on all parties of record set forth in the service list maintained on the STB website for docket AB 1331 by electronic transmission on the date of this letter.

Respectfully submitted,



Charles Montange

Rail counsel for Snohomish County

Att. (Declaration of Sharon Swan)

cc. all parties of record (J.M. Savage, Esq. for GNP; Matthew Cohen for Woodinville) (by email att.)

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BEFORE THE SURFACE TRANSPORTATION BOARD

SNOHOMISH COUNTY,
ADVERSE ABANDONMENT APPL. –
GNP RLY INC
In SNOHOMISH COUNTY, WA

No. AB 1331
DECLARATION OF SHARON SWAN

I, SHARON SWAN, declare under penalty of perjury pursuant to 28 U.S.C. 1246 that the following is true and correct to the best of my knowledge and belief:

- 1. I am over the age of 18 years and am competent to testify to the matters set forth herein.
- 2. I am the Director of the Parks Division of the Snohomish County Department of Conservation and Natural Resources (“Parks”). I have been employed in this capacity since 2022 and have been a Parks employee in some capacity since 2003. I am familiar with and knowledgeable about Parks policies, procedures, processes, and ongoing work performed by Parks employees.
- 3. As Director of Parks, I am responsible for the overall supervision of all Parks operations. My basic job function is to plan, organize, coordinate, and direct the operations of Parks, the County parks system (including the County fairgrounds), and Parks employees.

1 I report directly to the Director of the County Department of Conservation and Natural
2 Resources.

3 4. As Director of Parks, I am also familiar with and knowledgeable regarding
4 the County's interests in the "Eastside Rail Corridor" (also known as the "Woodinville
5 Subdivision") and the County's currently ongoing efforts to achieve "railbanking" of the
6 "freight portion" of said Woodinville Subdivision insofar as it is inside the boundaries of
7 Snohomish County. I have also reviewed and am familiar with County records and
8 documents concerning the County's acquisition of the Eastside Rail Corridor and the
9 County's goals for use of it (and with associated action in the Surface Transportation Board).
10 The Port of Seattle acquired the Eastside Rail Corridor (MP 38.25 in City of Snohomish to
11 MP 23.8 in Woodinville, hereinafter "rail corridor") in 2009, subject, as I understand it, to
12 a BNSF-retained freight easement which in turn was subject to a covenant to ensure
13 railbanking in the event of non-use for rail. According to County records, Snohomish
14 County acquired the Port's interests in the Eastside Rail Corridor in Snohomish County in
15 2016 for \$3,500,000. Consistent with regional land use planning, the County via STB docket
16 AB 1331 currently seeks to preserve the Eastside Rail Corridor under the federal railbanking
17 statute now that freight rail use has ceased.
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20 5. A portion of the Eastside Rail Corridor parallel to Kenwanda Drive in
21 Snohomish crosses a steep slope overlooking the Snohomish River and associated wetlands,
22 and has substantial cuts and fills, south of the City of Snohomish. (Attached as an Exhibit
23 is a tax assessor map showing the location in question.) The owner of one of the homes (lot
24 19) in a platted subdivision abutting the Eastside Rail Corridor requested that Parks remove
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1 certain trees within the Eastside Rail Corridor that interfered with their scenic views of
2 Mount Baker. Parks representatives inspected the location and determined that tree removal
3 was not consistent with typical division practices regarding similar requests and further
4 would be inconsistent with critical area protection and potentially threaten slope stability.
5 On behalf of Snohomish County, staff declined to arrange for removal of the trees. The lot
6 owners then requested that Parks authorize them to remove the trees. Again, Parks declined.
7 Evidently, at some point the landowners caused the trees to be felled within the Eastside
8 Rail Corridor abutting their lot, and also in the Eastside Rail Corridor abutting several other
9 lots (in the direction of Mount Baker). As a result, the steeply sloped bank between the east
10 side of the lots and the Eastside Rail Corridor was left in an unstable condition. Parks staff
11 observed that felled trees and brush were deposited in the drainage ditch and across the rail
12 track bed. Parks staff have cleared the track bed to allow maintenance access beyond and
13 taken preliminary measures to restore drainage. However, Parks has determined it will
14 require significant resources (likely including outside assistance) to stabilize and revegetate
15 the slope, remove the trunks and other debris from the ditches, and fully restore drainage.
16 Based on outside estimates to date, this work would cost about \$200,000.

19 6. Upon discovery by the County that trees had been felled onto the right of
20 way, Parks notified the County Prosecuting Attorney's Office. Deputy Prosecuting Attorney
21 Scott Marlow reached out to the landowners involved, noting that "the cutting down of tree
22 is of great concern" for it threatened "the stabilization of a dramatic slope in a sensitive area
23 and ... was potentially located in a wet-land area." A letter dated April 18, 2024, from the
24 attorney for the landowners (Reed Ripley) stated that "the County has no authority to
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1 exclude the [landowner's] use of the [rail] corridor” and “until the STB issues a decision
2 authorizing trail use, the County has no right to dictate property rights within the
3 corridor....” In short, it appears the landowner is taking the position that the County cannot
4 protect the physical integrity of the Eastside Rail Corridor, which it owns, until and unless
5 the Surface Transportation Board grants the County the relief it seeks.
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7 Pursuant to 28 USC 1746, I certify under penalty of perjury under the laws of the
8 United States of America that the foregoing is true and correct to the best of my knowledge
9 and belief.
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12 Signed this 31st day of May, 2024 at Stanwood, Washington.
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14 By: **Swan,** Digitally signed
15 **Sharon** by Swan, Sharon
16 Date: 2024.05.31
17 17:48:46 -07'00'

18 SHARON SWAN, Director
19 Snohomish County Parks
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EXHIBIT

