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Office of Proceedings
April 15, 2024
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April 15, 2024

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Portland & Western Railroad, Inc. – Abandonment Exemption –
In Washington County, OR
Surface Transportation Board Docket No. AB 541 (Sub. No. 4X)

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Notice of Exemption submitted under the Board's class exemption procedures at 49 C.F.R. Part 1152, Subpart F by Portland & Western Railroad, Inc. ("PNWR"). The filing fee has been paid via pay.gov.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

Justin J. Marks
Counsel to Portland & Western Railroad, Inc.

Enclosure

FILED
April 15, 2024
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 15, 2024
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 541 (Sub-No. 4X)

PORTLAND & WESTERN RAILROAD, INC.
- ABANDONMENT EXEMPTION - IN WASHINGTON COUNTY, OR

NOTICE OF EXEMPTION

(color copies included)

Eric M. Hocky
Clark Hill PLC
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Counsel for
Portland & Western Railroad, Inc.

Dated: April 15, 2024

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 541 (Sub-No. 4X)

PORTLAND & WESTERN RAILROAD, INC.
- ABANDONMENT EXEMPTION - IN WASHINGTON COUNTY, OR

NOTICE OF EXEMPTION

Portland & Western Railroad, Inc. (“PNWR”) is filing this Notice of Exemption under the Board’s class exemption procedures at 49 C.F.R. Part 1152, Subpart F, seeking exemption authority for its abandonment of the line of railroad extending between Milepost 27.84 and Milepost 27.79 in Banks, OR extending approximately 264 feet (the “Subject Line”). PNWR owns a perpetual freight easement for the Subject Line, and the underlying property is owned by the Oregon Department of Transportation (“ODOT”). There are no stations on the Subject Line. The Subject Line traverses through United States Postal Service ZIP Code 97106 entirely in Washington County, OR. Maps of the Subject Line are attached as Exhibit A.

The date of the last local or overhead freight service on the Subject Line is unknown, but it has been at least two years. At some point since its last service, the track on the Subject Line was removed. PNWR has been providing service on a parallel line through an agreement with the Port of Tillamook Bay Railroad since at least 1995.¹ Because this is a stub-ended line, there is no overhead traffic to be rerouted over other lines.

This Notice of Exemption is being filed pursuant to the requirements of 49 C.F.R. §1152.50 regarding exemptions for out of service rail lines. In accordance with such requirements, PNWR hereby provides the following information in support of its request for an abandonment exemption:

¹ *Portland & Western Railroad Inc., - Trackage Rights Exemption – The Burlington Northern Railroad Co.*, ICC Finance Docket No. 32765 (served Oct. 13, 1995).

- 1) The exact name of the Applicant is Portland & Western Railroad, Inc.
- 2) PNWR is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

PNWR has been a common carrier since approximately 1995.²
- 3) The relief sought by PNWR is an exemption for the abandonment of the line of railroad extending between Milepost 27.84 and Milepost 27.79 in Banks, OR. No stations exist on the Subject Line.
- 4) Maps of the Subject Line are attached hereto as Exhibit A.
- 5) The representative of PNWR to whom correspondence should be sent is: Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004; (202) 772-0916 or Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103; (215) 640-8523.
- 6) The Subject Line traverses through United States Postal Service ZIP Code 97106.
- 7) PNWR believes that the right-of-way may be suitable for trail use or other public purposes.

Any such use would potentially need the approval of ODOT as the owner of the underlying land.
- 8) PNWR proposes to consummate the abandonment on or after June 5, 2024.
- 9) PNWR certifies that:
 - a) No local or overhead traffic has moved over the Subject Line for over two years.

Because the Subject Line is not a “through line,” there is no overhead traffic on the Subject Line.

² *Portland & Western Railroad, Inc. – Lease and Operation Exemption – Southern Pacific Transp. Co.*, ICC Financed Docket No. 32758 (served Sept. 13, 1995).

- b) No formal complaint by a user of rail service on the Subject Line, or a state or local government entity acting on behalf of such user, regarding cessation of service over the Subject Line either is pending with the Board or any U.S. District Court, or has been decided in favor of the complainant within the two year period.
- 10) Although no employees of the PNWR will be affected by the proposed abandonment, PNWR recognizes that its abandonment of the Subject Line will be made subject to the standard employee protective conditions as set forth in *Oregon Short Line Railroad Co. - Abandonment -- Goshen*, 360 I.C.C. 91 (1979).
- 11) PNWR certifies that, on March 18, 2024, more than 20 days prior to this filing, it complied with the requirements of 49 C.F.R. §§ 1105.7 and 1105.11 by serving on the relevant agencies listed at 49 C.F.R. § 1105.7(b) and by filing with the Board an Environmental / Historic Report.³
- 12) PNWR certifies that it has complied with the legal (newspaper) notice requirements of 49 C.F.R. §1105.12. Notice of the proposed abandonment was published in the *Oregonian* on March 13, 2024. A copy of the form of notice and a copy of the proof of publication are attached as Exhibit B.
- 13) PNWR certifies that it has complied with the notice requirements of 49 C.F.R. §1152.50(d)(1). A copy of the notice dated March 29, 2024, sent to the required governmental agencies is attached hereto as Exhibit C.

³ PNWR is simultaneously filing a supplement to the Environmental/Historical Report with agency correspondence received after March 18.

For the reasons set forth above, the Board should find that PNWR's proposed abandonment satisfies the exemption requirements of 49 C.F.R. §1152.50, and should issue the appropriate notice.

Respectfully submitted,



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Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

*Counsel for Portland & Western
Railroad, Inc.*

Dated: April 15, 2024

VERIFICATION

I hereby verify on behalf of Portland & Western Railroad, Inc., under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on April 15, 2024.

DDDalton
Daniel Dalton, President

EXHIBIT A

MAPS





Subject Line to be Abandoned in red.

PNWR lines to remain active in orange.



EXHIBIT B

NEWSPAPER NOTICE

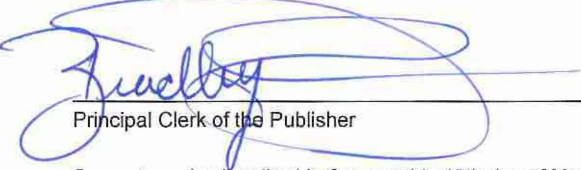
AD#: 0010839126

State of Oregon,) ss

County of Multnomah)

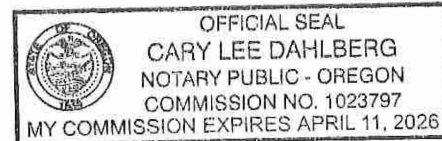
Bradley Dion being duly sworn, deposes that he/she is principal clerk of Oregonian Media Group; that Oregonian is a public newspaper published in the city of Portland, with general circulation in Oregon, and this notice is an accurate and true copy of this notice as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following date(s):

Oregonian 03/13/2024


Principal Clerk of the Publisher

Sworn to and subscribed before me this 13th day of March 2024


Notary Public



NOTICE OF INTENT TO ABANDON RAIL SERVICE

Portland & Western Railroad, Inc. (PNWR) Issues this notice that on or about April 15, 2024, it intends to file with the Surface Transportation Board (STB or Board), Washington, DC 20423, a notice of exemption pursuant to the provisions of 49 CFR Part 1152 Subpart F - Exempt Abandonments and Discontinuances of Service and Trackage Rights permitting PNWR to abandon service over approximately 264 feet of the line of railroad between milepost 27.84 and milepost 27.79, which traverses through United States Postal Zip Code 97106, in Banks, Washington County, Oregon. The PNWR proceeding will be docketed as STB Docket No. AB-541 (Sub-No. 4X).

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Office of Environmental Analysis (OEA), Surface Transportation Board, Washington, DC or by calling that office at 202-245-0454.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance to subsidize rail service) must be filed directly with the STB's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001 [see 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [see 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the STB's Office of Public Assistance, Governmental Affairs and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on PNWR's representative: Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W. Suite 1300 South, Washington, DC 20004; jmarks@clarkhill.com; 202-772-0916.

EXHIBIT C

10-DAY NOTICE LETTERS



Justin J. Marks
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March 29, 2024

VIA EMAIL AND/OR FIRST-CLASS MAIL

Oregon Department of Transportation
Rail and Public Transit Division
555 13th St. NE
Salem, OR 97301-4179

United States Department of the Army
Military Surface Deployment and Distribution
Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

U.S. Department of the Interior -
National Park Service
RTCA Program
1849 C Street, NW
Washington, DC 20240

Office of Chief of Forest Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-1111

Re: Portland & Western Railroad, Inc. – Abandonment Exemption –
In Washington County, OR
Surface Transportation Board Docket No. AB 541 (Sub. No. 4X)

To Whom it May Concern:

This letter is being sent to you pursuant to the requirements of 49 C.F.R. § 1152.50(d), to advise you that Portland & Western Railroad, Inc. ("PNWR") intends to seek authorization from the Surface Transportation Board ("STB") to abandon service over the line of railroad described below, by filing a notice of exemption pursuant to the class exemption provisions of 49 CFR § 1152.50 in the above-referenced STB docket. PNWR expects to file the notice of exemption with the STB on or about April 15, 2024.

PNWR will invoke the STB's class exemption procedures to abandon service of approximately 264 feet of track between Milepost 27.84 and Milepost 27.79 in Banks, OR.

The Subject Line traverses through United States Postal Service ZIP Code 97106. Maps of the Subject Line are enclosed.

Based upon information in PNWR's possession, the Subject Line does not contain federally granted rights of way. Any documentation in PNWR's possession related to the issue of federally granted rights of way for the Subject Line will be made available to those requesting it.

March 29, 2024
Page 2

Sincerely,

A handwritten signature in blue ink that reads "Justin J. Marks". The signature is written in a cursive, flowing style.

Justin J. Marks
Counsel to Portland & Western Railroad, Inc.

Enclosure







Subject Line to be Abandoned in red.

PNWR lines to remain active in orange.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice of Exemption was served on the persons shown on the attached list by email or first class mail, postage prepaid.

Oregon State Clearinghouse Oregon Department of Transportation 355 Capital Street, NE, MS 11 Salem, OR 97301-3871	The Natural Resources Conservation Service USDA 1201 NE Lloyd Blvd, Suite 900 Portland, OR 97232
Oregon Department of Environmental Quality 700 NE Multnomah Street, Suite 600 Portland, OR 97232-4100 nwraqpermits@deq.oregon.gov	Natural Resources Conservation Service USDA Office of the Chief 1400 Independence Ave., SW Room 5105-A Washington, DC 20250
State Historical Preservation Office Oregon Heritage Oregon Parks and Recreation Department 725 Summer Street NE, Suite C Salem, OR 97301 Koren.Tippett@oprds.oregon.gov ORSHPO.Clearance@oregon.gov	U.S. Environmental Protection Agency Region 10 1200 Sixth Avenue, Suite 155 Seattle, WA 98101
Mr. Bob Melbo State Rail Planner Oregon Department of Transportation Rail and Public Transit Division 555 13th St NE Salem, OR 97301-4179 Robert.I.Melbo@odot.oregon.gov	Cary Goodman Rail Asset Program Coordinator Oregon Department of Transportation Public Transportation Division 555 13th St NE Salem, OR 97301-4179 cary.goodman@odot.oregon.gov
Oregon Coastal Zone Management Oregon Coastal and Ocean Program Management Department of Land Conservation and Development 800 Oregon Street, NE #18 Portland, OR 97223 dlcd.info@dlcd.oregon.gov Lisa.phipps@dlcd.oregon.gov	U.S. Bureau of Land Management Oregon-Washington State Office 1220 S.W. 3rd Avenue Portland, OR 97204
U.S. Fish and Wildlife Service	U.S. Army Corps of Engineers

Region 1 Eastside Federal Complex 911 NE 11th Avenue Portland, OR 97232-4181	Portland District P.O. Box 2946 Portland, OR 97208-2946 Robert.H.Fraley@usace.army.mil
National Park Service 1849 C Street, NW Washington, DC 20240	National Park Service Regional Office Pacific West Region 333 Bush Street #500 San Francisco, CA 94104
Jolynn Becker City Manager City of Banks, Oregon jbecker@cityofbanks.org	The National Geodetic Survey Communications and Outreach Branch, ngs.infocenter@noaa.gov
The Honorable Kathryn Harrington Chair, Board of Commissioners MS-21 155 N. First Ave, Suite 300 Hillsboro, OR 97124 bcc@washingtoncountyor.gov	The Honorable Jerry Willey Chair, Board of Commissioners MS-21 155 N. First Ave, Suite 300 Hillsboro, OR 97124 bcc@washingtoncountyor.gov
United States Department of the Army Military Surface Deployment and Distribution Command Transportation Engineering Agency ATTN: SDTE-SA (Railroads for National Defense) 1 Soldier Way, Building 1900W Scott AFB, IL 62225	Office of Chief of Forest Service U.S. Department of Agriculture 1400 Independence Ave., SW Washington, DC 20250-1111
U.S. Department of the Interior - National Park Service RTCA Program 1849 C Street, NW Washington, DC 20240	

Justin J. Marks

Dated: April 15, 2024