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Before the Surface Transportation Board

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Office of Proceedings
April 6, 2020
Part of
Public Record

Eastern Idaho Railroad -)

Abandonment Exemption -) AB-1252 (Sub.no. 1X)

In Bonneville County, ID)

City of Idaho Falls

Comment on an Omission from Railroad's Notice of Exemption

and

Comments on STB Draft Environmental Assessment

The Office of Environmental Analysis ("OEA") correctly notes that City of Idaho Falls ("City") has (timely) filed a statement of willingness, and a request for a public use condition, with regard to the railroad line at issue in this proceeding. The line in question (M.P. 184.14 to M.P. 184.90, roughly Yellowstone Highway to W. Broadway Street) has not been used for rail purposes for many years, and has long been a priority item for acquisition for the City's non-motorized trail system. The City anticipates negotiation with Eastern Idaho Railroad ("E.I.R.R.") to acquire the line pursuant to 16 U.S.C. 1247(d) once this Board issues a Notice of Interim Trail Use ("NITU") authorizing abandonment or railbanking. E.I.R.R. by a

filing on March 13, 2020, consented to negotiate under 16 U.S.C. 1247(d).

Summary

E.I.R.R. omitted from its Notice of Exemption some language required under 49 C.F.R. 1152.50(d)(1). Inasmuch as the City wishes to avail itself of that language, the City desires it to be enforceable, and the easiest way at this point to correct the omission is for OEA to recommend and the Board to impose the language as a condition on the proposed abandonment.

The City otherwise supports a public use finding under 49 U.S.C. 10905, concurs that railbanking here will eliminate adverse impacts on historic assets, supports OEA's first and second recommended conditions, notes inconsistencies in OEA's discussion relevant to the third condition, and seeks modifications of that condition per DEA p.8.

I.

Omission of Required Language in E.I.R.R. Notice of Exemption
Research to date by the City indicates that all, and at least some, of the line at issue in this proceeding is federally granted railroad right of way (1875 Act or equivalent). 49 C.F.R. 1152.50(d)(1) provides that a railroad in its "notice of exemption" filed with STB include the following statement:

"Based on information in our possession, the line
(does) (does not) contain federally granted rights-of-way

Any documentation in the railroad's possession will be made available promptly to those requesting it."

It does not appear that E.I.R.R.'s notice of exemption filed with the Board contains the required statement. The DEA does not discuss this matter.

Even if the omission was (as is likely) merely inadvertent, the Board should take some action to require disclosure of the information by E.I.R.R. in the first quoted sentence, and to provide that the railroad must promptly make available the documentation referenced in the second quoted sentence.¹

Believing this the easiest way to address the matter, the City requests that STB OEA recommend that Office of Proceedings/STB impose a condition that E.I.R.R. comply with 49 C.F.R.

1152.50(d)(1) by (a) stating for the record in this proceeding whether (based on information available to E.I.R.R.) the rail line has federally granted parcels, and (b) providing that the railroad upon request must promptly provide all documentation bearing on federally granted right of way for this line in its possession.

¹ If a railroad includes the quoted language in its Notice of Exemption, but fails promptly to provide the documentation in its possession upon request, then the Notice is false and misleading and void ab initio. This makes the requirement to provide documentation virtually self-enforcing. Omission of the quoted language renders the Notice incomplete by failing to address a matter on which the railroad must make a truthful representation.

The City in all events hereby requests that E.I.R.R. in accordance with 49 C.F.R. 1152.50(d)(1) promptly provide the City [copies to both rail counsel (Mr. Montange) and City Attorney (Mr. Fife) if possible] with all documentation (including but not limited to valuation section maps, maps derived from valuation section maps, other maps or filings relating to ownership (including copies of filings with agencies of the federal government), appraisals disclosing nature of ownership, and all disclosures to E.I.R.R. by predecessors in interest relating to nature of ownership of the line) bearing on federally granted title. This information is relevant to techniques for preservation of the line for non-rail public uses.

II.

Comments on Draft Environmental Assessment

1. The City concurs with OEA insofar as the OEA concludes that in the event the City acquires the line, "the proposed abandonment would be unlikely to result in any adverse effects to any historic properties listed in or eligible for listing in the National Register." Draft Environmental Assessment ("DEA") at p. 8.

2. The City notes that 49 U.S.C. 10905 provides that should the Board authorize an abandonment, it "shall find whether the [relevant] rail parties are appropriate for use for

public purposes, including ... conservation ... and recreation."

The DEA at p. 11 finds that the line "may be suitable for other public use." In light of the City's long-extant prioritization of this line for addition to its non-motorized trail system,² the City requests that OEA in any final EA find that the line is suitable for other public use, or recommend such a finding to the Office of Proceedings and Board.

3. The City concurs with the first condition proposed by OEA in the DEA (consultation with City and implementation of reasonable recommendations to minimize the impact of abandonment-related salvage activities, to the extent there are any). DEA at 9-10.

4. The City likewise concurs in the second proposed condition (DEA at 10) relating to salvage-related dredge or fill activities, if any.

5. The City seeks clarification concerning the third recommended condition (DEA at 10). City takes note of the DEA's statement at p. 8 that in the event E.I.R.R. and the City enter into an "interim trail use agreement," the abandonment will be

² As the City stated in its cover letter dated March 6 filed in this proceeding, the City conducted an extensive study of means to enhance pedestrian and bicycle transportation within the City and neighboring communities as part of its "Connecting our Community" project. A comprehensive report (and Appendices) dated November 2014 arising from that study may be found at the following web address:
<https://www.idahofallsidaho.gov/621/Connecting-Our-Community>.

in abeyance and there will "no longer be a federal undertaking ... and the Section 106 process can be paused" until the railroad seeks fully to abandon the line. Although the DEA thus suggests that the section 106 process may be paused in the event an interim trail use agreement is reached, OEA's proposed third condition is inconsistent with such a pause. The City therefore seeks two modifications of the proposed third condition, both of which are consistent with DEA's statement at p. 8.

First, OEA's proposed third condition would require E.I.R.R. to retain its interest in and take no steps to alter the historic integrity not only of all historic properties but also a-historic properties such as track and ties until the Section 106 process is completed. This language is inconsistent with pausing compliance with Section 106 during railbanking, since the condition if imposed requires completion of the 106 process before the railroad can alienate the property to the City for railbanking. The City supports modification of the third condition to allow the Section 106 process to be paused in the event a railbanking agreement is reached.

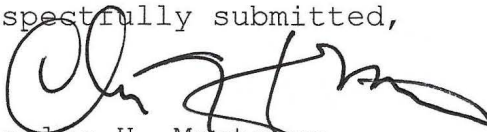
Second, the proposed third condition would appear to preclude the City or the railroad from removing the a-historic track and ties without completing the Section 106 process regardless whether the line is railbanked. Railbanking anticipates removal of track and ties. Indeed, in this case the

City anticipates that track and ties will inevitably be removed in order to allow interim trail use and railbanking. If track and ties cannot be removed for or during railbanking without completion of the 106 process, then railbanking cannot effectively "pause" the Section 106 process per DEA p. 8. The City supports modification of the third condition to allow the track and ties to be removed prior to completion of the 106 process in the event a railbanking agreement is reached.

6. For the record, the official name of Sportsman Park is "Pedersen Sportsman Park." The reference to "Port Canal" on p.7 (last line before the heading "Section 106 Review") should be changed to "Porter Canal."

7. By my signature below, I certify service by USPS upon counsel for E.I.R.R. at the address stated, and courtesy email, on 6 April 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. H. Montange', written over the typed name.

Charles H. Montange

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