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December 6, 2019

300101

VIA E-FILING

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

ENTERED
Office of Proceedings
December 6, 2019
Part of
Public Record

Re: STB Docket No. AB- 541 (Sub-No. 2X)
Portland & Western Railroad, Inc.
-Discontinuance of Service Exemption-
In Clatsop County, OR

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced docket is a Notice of Exempt Discontinuance being filed under 49 C.F.R. §1152 Subpart F. The filing fee of \$4,400 was paid using Pay.gov.

Please let me know if you have any questions regarding this filing.

FILED
December 6, 2019
SURFACE
TRANSPORTATION BOARD

CLARK HILL



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

Enclosures

FEE RECEIVED
December 6, 2019
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-541 (Sub-No. 2X)

PORTLAND & WESTERN RAILROAD, INC.
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN CLATSOP COUNTY, OR

NOTICE OF EXEMPT DISCONTINUANCE

(color images included)

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Counsel for Portland & Western Railroad, Inc.

Dated: December 6, 2019

Before the

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-541 (Sub-No. 2X)

**PORTLAND & WESTERN RAILROAD, INC.
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN CLATSOP COUNTY, OR**

NOTICE OF EXEMPT DISCONTINUANCE

Portland & Western Railroad, Inc. (“PNWR”) hereby invokes the Board’s class exemption procedures at 49 C.F.R. part 1152 subpart F seeking exemption authority to discontinue its freight operating easement over a 22.58-mile rail line extending between milepost 96.88 near Tongue Point/Astoria and milepost 74.3 near Wauna located in Clatsop County, OR (the “Subject Line”).

The Subject Line is an out of service segment of line the underlying property of which is owned by the Oregon Department of Transportation over which PNWR holds a perpetual freight operating easement. It is a 22.58-mile segment at the end of the roughly 96.88-mile “Astoria Branch” extending between milepost 5.22 near Willbridge and milepost 96.88 near Tongue Point/Astoria, in Clatsop Columbia, and Washington Counties, OR.¹ The Subject Line has been out of service since 2004 and the last local service over it is believed to have been 2004. The Subject Line is stub-ended so no overhead service is possible or needs to be transported over other routes.

¹ *Portland & Western Railroad, Inc. – Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket 33424 (served July 22, 1997). PNWR acquired from BNSF Railway an exclusive rail easement which gave PNWR a permanent and exclusive right to conduct rail operations over the right-of-way and the parties entered into a bill of sale, which transferred title to all rail service related property to PNWR.

This Notice of Exempt Discontinuance is being filed pursuant to the requirements of 49 C.F.R. part 1152 subpart F. In accordance with such requirements, Applicant hereby states as follows:

1. The exact name of Applicant is Portland & Western Railroad, Inc.
2. Applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.
3. PNWR is invoking the Board's class exemption procedures in order to discontinue service over an out-of-service railroad line extending between milepost 96.88 near Tongue Point/Astoria, Oregon and milepost 74.3 near Wauna, Oregon. The Subject Line passes through Clatsop County.
4. A detailed map of the Subject Line is attached hereto as Exhibit A. A map of the PNWR system is also attached as part of Exhibit A.
5. The representative of PNWR to whom correspondence should be sent is:

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave., NW
Suite 1300 South
Washington, DC 200004
Tel: (202) 772-0916
6. The Subject Line to be discontinued traverses through United States ZIP Code 97013.
7. The notice of exemption presented herein pertains to PNWR's proposal to discontinue common carrier operations over the Subject Line and not abandonment authority. Accordingly, trail use / rail banking and other public use conditions are not appropriate.²

² See *Norfolk Southern Railway Company – Discontinuance of Service Exemption – In St. Joseph and LaPorte Counties, IN*, STB Docket No. AB-290 (Sub-No. 307X) (served June 18,

8. Applicant proposes to consummate the discontinuance on or after January 27, 2020.

9. PNWR certifies that:

(a) It has not handled local traffic over the Subject Line in at least two years.

In addition, because the Subject Line is stub-ended, it has not handled any overhead traffic over the Subject Line in at least two years. There is no potential overhead traffic that would need to be transported via other rail routes.

(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 PNWR's 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 PNWR will be affected by the proposed discontinuance, PNWR recognizes that the discontinuance of service will be made subject to the standard employee protective conditions as set forth in *Oregon Short Subject Line Railroad Co. - Abandonment* -- Goshen, 360 I.C.C. 91 (1979).

11. Because PNWR seeks only discontinuance and not abandonment authority, PNWR will not be disposing of or altering the Line Segment or any structures that are 50 years old or older. An environmental and historic report is not required for a discontinuance proceeding.³

12. PNWR certifies that it has complied with the legal (newspaper) notice

2008); *Everett Railroad Company – Discontinuance of Service Exemption – In Blair County, PA*, STB Docket No. AB-721X (served November 16, 2007); *Columbus and Greenville Railway Company – Discontinuance of Service Exemption – In Greenwood, MS*, STB Docket No. AB-297 (Sub-No. 103X) (served July 2, 2007).

³ See *supra* note 2 and 49 C.F.R. §1105.6(c) and §1105.8(b).

requirements of 49 C.F.R. §1105.12. Notice of the proposed discontinuance was published on November 22, 2019, in the *Oregonian*. A copy of the proof of publication is attached as Exhibit B.

13. PNWR has complied with the advance notice requirements of 49 C.F.R. §1152.50(d)(1). A copy of the notice dated November 20, 2019, sent to the required governmental agencies is attached hereto as Exhibit C.

For the reasons set forth above, the Board should determine that the proposed discontinuance of service qualifies for the use of the Board's class exemption procedures at 49 C.F.R. part 1152 subpart F, and it should issue the appropriate notice.

Respectfully submitted,



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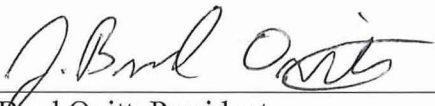
Counsel for Portland & Western Railroad, Inc.

Dated: December 6, 2019

VERIFICATION

I hereby verify on behalf of the 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.

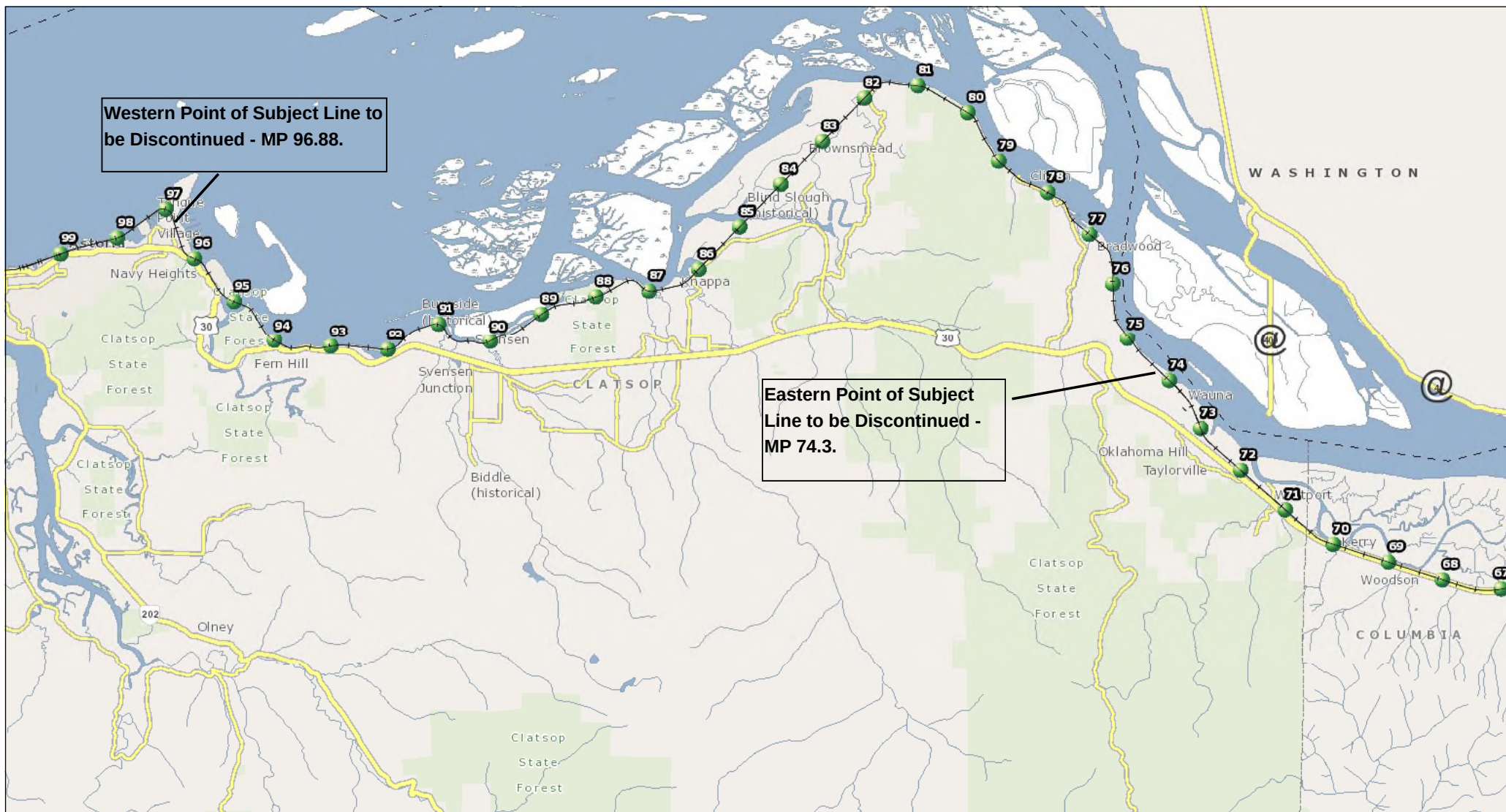
Executed on Dec. 6, 2019 .



J. Brad Ovitt, President

EXHIBIT A - MAP

PNWR Tongue Point/Astoria to Wauna Discontinuance



→ Rail Network ● Rail Mile Posts



0 1.5 3 6 mi

Created on November 12, 2019

Oregon Department of Transportation, Geographic Information Services Unit

ODOT - Geographic Information Services

This product is for informational purposes and may not be suitable for legal, engineering, or surveying purposes. Users of this product should review and consult the primary data sources to determine the usability

Out of Service Line to be Discontinued



PNWR - Portland & Western Railroad, Inc.

EXHIBIT B – NEWSPAPER NOTICE

AD#: 0009415591

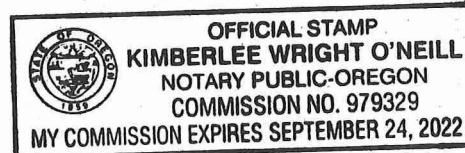
State of Oregon,) ss
County of Multnomah)

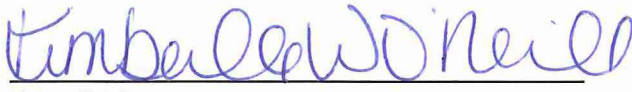
Justin Eubanks being duly sworn, deposes that he/she is principal clerk of Oregonian Media Group; that The Oregonian is a public newspaper published in the city of Portland, with general circulation in Oregon, and this notice is an accurate and true copy of this notice as printed in said newspaper, was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

The Oregonian 11/22/2019


Principal Clerk of the Publisher

Sworn to and subscribed before me this 22th day of November 2019




Notary Public

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE

The Portland & Western Railroad, Inc. (PNWR) gives notice that on or about December 6, 2020, it intends to file with the Surface Transportation Board (STB), 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 discontinue service over approximately 22.58 miles of the line of railroad between milepost 96.88 near Astoria and milepost 74.3 near Wauna, in Clatsop County, Oregon. The Line traverses through United States ZIP Code 97013. The PNWR proceeding will be docketed as STB Docket No. AB-541 (Sub-No. 2X).

Because the proposed action entails the discontinuance of service over the Line, rather than abandonment, no environmental or historic documentation is required under 49 CFR 1105.6 and 1105.8. Appropriate offers of financial assistance to subsidize rail service can be filed with the STB. Trail use / rail banking and public use condition requests are not appropriate in discontinuance proceedings.

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 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; 202-772-0916.

**EXHIBIT C – 10 DAY NOTICES
(Excluding Enclosures)**

CLARK HILL

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November 20, 2019

To: All Persons on the Attached Service List

Re: STB Docket No. AB- 541 (Sub-No. 2X)
Portland & Western Railroad, Inc.
-Discontinuance of Service Exemption-
In Clatsop County, OR

Dear Sir or Madam:

This letter is being sent to you pursuant to the requirements of 49 C.F.R. §1152.50(d), to advise you that the Portland & Western Railroad, Inc. ("PNWR") plans to seek authorization from the Surface Transportation Board ("STB") to discontinue service over the line of railroad described below, by filing a verified notice of exemption pursuant to the provisions of 49 CFR Part 1152 Subpart F. PNWR expects to file the notice of exemption with the STB on or about December 6, 2019, under STB Docket No. AB 541 (Sub-No. 2X).

PNWR will invoke the STB's exemption procedures to discontinue service of the line of railroad between milepost 96.88 near Astoria and milepost 74.3 near Wauna, extending through Clatsop County, Oregon (the "Line"). The Line traverses through United States Zip Code 97013. A map of the Line is enclosed with this letter.

Because this proceeding would involve the discontinuance of common carrier service and not abandonment of the Line, PNWR understands that the question of whether the Line contains federally granted rights-of-way is inapplicable, and that the Line would not be suited at this time for alternative public use. Any pertinent documentation in the railroads' possession will be made available promptly to those requesting it.

November 20, 2019
Page 2

PNWR has no current plans to salvage the track along the Line as a result of discontinuance.

CLARK HILL

A handwritten signature in blue ink, appearing to read "Justin J. Marks", with a stylized flourish at the end.

Justin J. Marks
Senior Attorney

Enclosures

CLARK HILL

CERTIFICATE OF SERVICE

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



Justin J. Marks

Dated: December 6, 2019

**Service List for
STB Docket No. AB-541 (Sub-No. 2X)**

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