

46641
DO

SERVICE DATE – LATE RELEASE NOVEMBER 2, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1243X

PATRIOT WOODS RAILROAD, LLC—ABANDONMENT EXEMPTION—IN COWLITZ
COUNTY, WASH.

Docket No. AB 1244 (Sub-No. 1X)

COLUMBIA & COWLITZ RAILWAY, LLC—DISCONTINUANCE EXEMPTION—IN
COWLITZ COUNTY, WASH.

Decided: November 2, 2018

On August 11, 2017, Patriot Woods Railroad, LLC (PW) and Columbia & Cowlitz Railway, LLC (CLC) jointly filed a verified notice of exemption under 49 C.F.R. pt. 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for PW to abandon, and for CLC to discontinue service over, approximately 21.5 miles of rail line between milepost 8.5 at Ostrander Junction and the end of the line at milepost 30 (the Line) in Cowlitz County, Wash. Notice of the exemption was served and published in the Federal Register on August 31, 2017 (82 Fed. Reg. 41,462). The exemption became effective on September 30, 2017. The notice stated that, if consummation had not been effected by PW's filing of a notice of consummation by August 31, 2018, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

On August 22, 2017, Cowlitz County (the County) timely requested a notice of interim trail use or abandonment (NITU) pursuant to § 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. The County also requested a public use condition under 49 U.S.C. § 10905 and 49 C.F.R. § 1152.28. On August 30, 2017, PW filed a letter stating its willingness to negotiate interim trail use/rail banking with the County.

The Board's Office of Environmental Analysis served an environmental assessment (EA) on September 5, 2017, solicited comments, and issued a Final EA on September 25, 2017. On September 29, 2017, the Board issued a decision and NITU, permitting the County to negotiate with PW for interim trail use and imposing a public use condition. See Patriot Woods R.R.—Aban. Exemption—in Cowlitz Cty., Wash., AB 1243X et al., slip op. at 5-7 (STB served Sept. 29, 2017). In the same decision, the Board imposed the conditions recommended in the Final EA, including a historic preservation condition pursuant to Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and several additional environmental conditions. Id. The public use condition expired on March 29, 2018. Id. at 5. The time to negotiate interim trail use was scheduled to expire on March 28, 2018, but was extended to

September 24, 2018. See Patriot Woods R.R.—Aban. Exemption—in Cowlitz Cty., Wash., AB 1243X et al. (STB served Apr. 11, 2018).

On August 24, 2018, PW filed notice that it had terminated negotiations with the County for interim trail use/rail banking over the Line. PW also requested that the Board vacate the NITU to permit the abandonment of the Line. PW stated that it would “comply with the conditions imposed in [the Board’s September 2017 decision], including but not limited to completing the Section 106 process of the [NHPA], prior to consummating the abandonment.” (PW Letter, Aug. 23, 2018, Patriot Woods R.R.—Aban. Exemption—in Cowlitz Cty., Wash., AB 1243X.) Notwithstanding PW’s notice that it was terminating interim trail use negotiations, on September 19, 2018, the County filed a request for another 180-day extension to continue negotiations for the interim trail use/rail banking of the Line. On October 3, 2018, PW filed a reply, opposing the County’s extension request and reiterating its intent to terminate negotiations.

Under the Trails Act, interim trail use negotiations are voluntary and consensual between the railroad and the trail sponsor. Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986); Nat’l Wildlife Fed’n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988). Here, PW has withdrawn from and no longer consents to continued negotiations. Therefore, the County’s request for an extension of the NITU negotiating period until March 22, 2019, will be denied. Given that the NITU negotiating period has expired, PW’s request to vacate the NITU will be denied as moot. PW can exercise its authority to abandon the Line in compliance with the Board’s September 2017 decision. See Patriot Woods R.R., AB 1243X et al., slip op. at 5-7 (STB served Sept. 29, 2017).

It is ordered:

1. The County’s request for an extension of the NITU is denied.
2. PW’s request to vacate the NITU is denied as moot.
3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.