

HAGLUND KIRTLEY KELLEY HORNGREN & JONES LLP

ATTORNEYS AT LAW

ONE MAIN PLACE
101 SW MAIN STREET, SUITE 1800
PORTLAND, OREGON 97204-3226

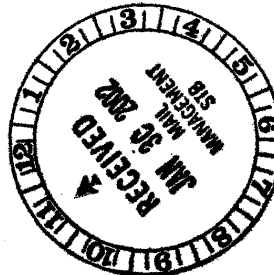
TELEPHONE (503) 225-0777
FACSIMILE (503) 225-1257

ENTERED
Office of the Secretary

JAN 31 2002

Part of
Public Record

October 23, 2001



204658

Vernon Williams, Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423

Re: STB Docket No. AB-433X

Dear Mr. Williams:

We represent Wallowa County who has an interest in the abandonment of the Idaho Northern & Pacific rail line from Elgin to Joseph, Oregon. This letter is to inform the Board that the county has recently been sued by the railroad in the United States District Court for the District of Oregon arguing that the county has no interest over the removal of the rails despite the fact that the Abandonment Decision of March 12, 1997 requires the railroad to comply with the Wallowa County/Nez Perce Salmon Habitat Recovery Plan. The railroad sought a court order to enjoin the county. The Court declined to rule given that there is a pending petition before the Surface Transportation Board to reopen the Abandonment Decision. The District Court issued an order stating that it would not rule until December 14, 2001. A copy of that order is enclosed. We believe all parties have additional information, if the Board desires, that can be submitted regarding the economic implications of rail operations and abandonment, an Offer of Financial Assistance, Endangered Species Act Section 7 consultation obligations, and the timing of salvage operations to avoid harm to the threatened fish species in the Wallowa and Grand Ronde rivers.

Sincerely,

Scott W. Horngren

Enclosure

cc: Parties of Record

FILED

REC'D *01 SEP 20 16:15 USDC-ORP

2001 SEP 24 P 3: 22

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

BY _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**IDAHO NORTHERN & PACIFIC RAILROAD
COMPANY., an Idaho corporation, and WILSON
BUILDING CENTERS, INC., dba KLAMERT
RAILROAD SALVAGE, an Iowa corporation,**

Plaintiffs,

v.

**WALLOWA COUNTY., a municipal corporation of
the State of Oregon,**

Defendant.

Case No. CV-01-1212 JO

**ORDER RE HEARING ON
PRELIMINARY INJUNCTION**

This matter having come before the Court on plaintiffs' motion for a preliminary injunction; plaintiffs having been represented by Richard J. Stone and defendant having been represented by Scott W. Horngren; the Court having reviewed the submissions of the parties, including the Decision of the Surface Transportation Board in Idaho Northern & Pacific Railroad Company - Abandonment Exemption, Docket No. AB-433X (March 12, 1997), the parties' respective memoranda of points and authorities, and the sworn written testimony of Rob Robinson, Richard J. Stone, and William H. Oliver, and having heard the sworn oral testimony of Paula Krieger, received defendant's offer of proof, and considered the arguments of counsel,

Page 1 - **ORDER RE HEARING ON PRELIMINARY INJUNCTION**

BALL JANIK LLP
One Main Place
101 Southwest Main Street, Suite 1100
Portland, Oregon 97204-3219
Telephone 503-228-2525

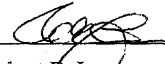
267627

1 and good cause appearing therefore, the Court finds, concludes and orders:

2 1. A ruling on the motion for a preliminary injunction will be held in abeyance until
3 the earlier of December 14, 2001, or a further ruling by the Surface
4 Transportation Board under Docket No. AB-433X;

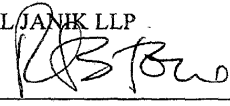
5 2. Any party may come back to this Court at any time to apply for any further or
6 different relief.

7 IT IS SO ORDERED this 24th day of September, 2001.

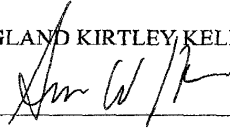
8
9 By 
10 Robert E. Jones
11 United States District Judge

12 APPROVED AS TO FORM:

13 BALL JANIK LLP

14 By 
15 Richard J. Stone, OSB No. 94002
16 Attorneys for Plaintiffs

17 HAGLAND KIRTLEY KELLY & HORNGREN LLP

18
19 By 
20 Scott W. Horngren, OSB No. 88060
21 Attorneys for Defendant
22
23
24
25
26

Page 2 - ORDER RE HEARING ON PRELIMINARY INJUNCTION

BALL JANIK LLP
One Main Place
101 Southwest Main Street, Suite 1100
Portland, Oregon 97204-3219
Telephone 503-228-2525

267627