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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF GREAT NORTHWEST
RAILROAD'S INTENT TO ABANDON THE
JAYPE BRANCH LINE LOCATED IN
CLEARWATER COUNTY, IDAHO.**

CASE NO. GNW-R-04-1

**MOTION REQUESTING THAT
COMMISSION OBTAIN
STB ORDER REQUIRING
REMOVAL OF RAILROAD
STRUCTURES FOLLOWING
ABANDONMENT**

COMES NOW, IDAHO DEPARTMENT OF LANDS ("IDL"), by and through its attorney, Deputy Attorney General Emily Kane, and moves that the Idaho Public Utilities Commission ("PUC") actively represent the interests and concerns of IDL in proceedings before the Surface Transportation Board ("STB") regarding the abandonment of the Jaype branch line located in Clearwater County, Idaho.

MOTION REQUESTING THAT COMMISSION OBTAIN STB ORDER
REQUIRING REMOVAL OF RAILROAD STRUCTURES FOLLOWING
ABANDONMENT, Page 1

This motion is made pursuant to Rule 56 of the Rules of Procedure of the PUC, in response to the PUC's NOTICE OF INTENT TO ABANDON A RAIL LINE, NOTICE OF HEARING, which was served on IDL on June 8, 2004.

STATEMENT OF FACTS AND LAW

Generally, IDL's functions include management of state lands and protection of Idaho's natural resources. Pursuant to section 7, article 9 of the Idaho Constitution, IDL, on behalf of the State Board of Land Commissioners, is charged with the "direction, control, and disposition of the public lands of the state." Idaho Code § 58-101.

On May 19, 1928, and November 7, 1929, pursuant to its authority under Idaho Code § 58-603, IDL granted rights-of-way to Northern Pacific Railway Company for the purpose of running the Jaype branch line over state land. (*See* Exhibit A, Right Of Way Deed no. 252; and Exhibit B, Right Of Way Deed no. 267.)

The land adjacent to this portion of railroad easement to be abandoned is still state land, and management thereof remains the responsibility of IDL. Upon abandonment of the Jaype branch line, the right-of-way upon which railroad structures, including ties, trestles, and culverts, are now situated, will be reabsorbed into the adjacent parcel and will also be managed by IDL.

Materials and structures that will remain on this right-of-way when the Jaype branch line is abandoned include approximately thirteen (13) trestles and eleven (11) culverts, as well as uncounted rails, ties, abutments, and concrete barriers. (*See* Exhibit C, IDL's Structure Location Survey.) Should the salvage effort fail to accomplish removal of all materials and structures on state land, IDL will be left with this task. This is a task for which IDL lacks adequate resources, and for which IDL should not be responsible. **IDL therefore seeks assurance that Great Northwest Railroad, Inc. will indeed remove any and all trestles, culverts, rails, ties,**

abutments, and concrete barriers from the abandoned right-of-way, if and when the abandonment is consummated.

The railroad structures are approximately eighty (80) years old and throughout their existence have been exposed to the stresses of regular use and constant exposure to often-harsh elements. Most of the trestles and culverts are already in various states of deterioration.

The ongoing weakening of these structures places at risk the integrity of Orofino Creek and the stream tributaries thereto that have been channeled under trestles and through culverts along the Jaype branch line. Further, in the event of a high water event on Orofino Creek, the trestles could easily collapse and wash massive amounts of debris downstream, or accumulate flood-level amounts of water and release it downstream all at once. It is likely that such a flood would cause extensive property damage, and downstream bridges and roads would be put at risk.

These foreseeable dangers, and other unforeseen contingencies, will very likely arise if aging railroad structures are allowed to remain on the former railroad easement following the salvage effort. Both are hazardous to the health, safety, and well being of the people, property, and natural resources of the State of Idaho.

For these reasons, it is the opinion of IDL that abandonment of the Jaype branch line will adversely affect the area being served, unless the PUC obtains from the STB an enforceable order requiring Great Northwest Railroad, Inc. to remove all trestles, culverts, rails, ties, abutments, concrete barriers, and other structures or materials from the abandoned rail line.

PRAYER FOR RELIEF

IDL requests that the PUC seek from the STB an enforceable order requiring Great Northwest Railroad, Inc. to remove all trestles, culverts, rails, ties, abutments, concrete barriers, and other structures or materials from the abandoned right-of-way.

Alternatively, if no such order may be obtained, IDL requests that the PUC file with the STB a formal protest to the proposed abandonment of the Jaype branch line on the grounds that the abandonment will adversely affect the area being served.

IDL requests the opportunity to present an oral argument in support of this motion at the public hearing scheduled for 1:00 p.m. on Monday, June 28, 2004 in Orofino.

DATED this 21st day of June 2004.



EMILY KANE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have, this 21st day of June 2004, served one (1) original and, by permission of the Commission Secretary under Rule 61.03, two (2) copies of the foregoing MOTION REQUESTING THAT COMMISSION OBTAIN STB ORDER REQUIRING REMOVAL OF RAILROAD STRUCTURES FOLLOWING ABANDONMENT by hand delivery to:

Jean D. Jewell, Commission Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, ID 83702

I FURTHER CERTIFY that I have, this 21st day of June 2004, served one (1) copy of the foregoing MOTION REQUESTING THAT COMMISSION OBTAIN STB ORDER REQUIRING REMOVAL OF RAILROAD STRUCTURES FOLLOWING ABANDONMENT by hand delivery to:

Don Howell, Lead Deputy Attorney General
Idaho Public Utilities Commission
472 W. Washington
Boise ID 83702



EMILY KANE
Deputy Attorney General

Exhibits A, B and C

are too dark to scan – see case file