



## Portland Vancouver Junction Railroad Questions and Answers

### **LEASE AGREEMENT**

#### **Who owns the short line railroad, commonly known as the Chelatchie Prairie Railroad?**

Clark County (County) has owned the 33-mile short line railroad since 1987.

#### **When did the County lease the railroad to an outside entity to operate and maintain the railroad?**

The County first negotiated a lease agreement (Agreement) for the railroad to Columbia Basin Railroad in 2004.

#### **When did the County begin leasing with Portland Vancouver Junction Railroad (PVJR)?**

The Agreement was transferred from Columbia Basin Railroad to PVJR in 2012.

#### **What led the County and PVJR to negotiate an updated Agreement?**

In 2018, the County reviewed the Agreement and identified several significant legal concerns, including lack of council review and approval (as required by county code), an ambiguous and likely unreasonable lease term, and lack of compensation paid or other benefit to the County. After communicating concerns with PVJR, both the County and PVJR filed lawsuits which extended over the course of a few years, including two attempts at mediation.

#### **When was the current Agreement between the County and PVJR approved?**

The county council approved the Agreement on December 6, 2022.

#### **Where can I see the Agreement?**

The Staff Report and Agreement can be found by clicking [here](#). The Council discussion can be found by clicking [here](#) (note, the discussion starts at approximately 1:27:02).

### **PROPERTIES and ALLEGATIONS**

#### **Where are the properties where the alleged violations of the Agreement occurred?**

The first property is near Chelatchie, Washington at approximately latitude 45.921754<sup>0</sup> N and longitude -122.591212<sup>0</sup> W on parcels [274571000](#) and [274574000](#). The second property is in Vancouver, Washington, near latitude 45.699163<sup>0</sup> N and longitude -122.591212<sup>0</sup> W also known as the Barberton site on parcels [986061515](#) and [986064819](#).

#### **What are the allegations against PVJR?**

##### Chelatchie Property

- Construction activities which have obstructed the flow of water through tributaries to Chelatchie Creek and unauthorized discharges into adjacent wetlands.

##### Barberton Property

- Unauthorized discharges into wetlands adjacent to Curtin Creek.
- Trespassing on County property which resulted in the following:



- Substantial runoff from PVJR site causing erosion onto County property leading to the Curtin Creek Natural Area, including deposition of sediment and turbid stormwater into the County's stormwater system and nearby stormwater pond.
- Damage to County property, including, but not limited to, removal of County-owned fence, placement of rock on County property, and burying a county manhole.

## **REGULATORY AGENCIES**

### **Who in the County has the responsibility to ensure the Agreement is adhered to?**

A staff member in Public Works is the contract manager for this Agreement. They coordinate with other applicable County departments and outside agencies as necessary.

### **Are there other agencies who have regulatory authority over the actions taken by PVJR?**

Yes. Outside regulatory agencies include, but are not limited to, Washington State Department of Ecology, Washington State Department of Fish and Wildlife, Washington State Department of Natural Resources, Environmental Protection Agency (EPA), Army Corps of engineers, and National Oceanic and Atmospheric Administration.

### **What areas do the other regulatory agencies have jurisdiction over?**

Applicable federal laws including, but not limited to, compliance with the Clean Water Act – Sections 401 and 404, and the Endangered Species Act. Washington State Forest Practices Rules apply to property adjacent to the railroad where forest management activities have occurred.

### **Which regulatory agency enforces violations of the Clean Water Act?**

The EPA will serve as the lead federal enforcement agency pursuant to the Clean Water Act Enforcement Memorandum of Agreement between the US Army Corps of Engineers and the EPA dated January 19, 1989.

## **ENFORCEMENT**

### **What is being done by the regulatory agencies regarding the allegations?**

All the agencies are coordinating their efforts in the investigation, which is still underway. As more information becomes solidified, they will outline any findings, remediation and other applicable enforcement actions.

- On February 14, 2024, the EPA transmitted a letter to PVJR formally initiating a Clean Water Act enforcement action for alleged discharges of pollutants into waters of the United States at two sites, the Chelatchie and Barberton properties.
- The EPA transmitted a letter to Michael Leboki of Taylor Transport Inc. and Green Works Enterprises Inc. on February 21, 2024, requesting information about the alleged discharges of pollutants into waters of the United States at two sites, the Chelatchie and Barberton properties.

### **Have any actions been taken by the regulatory agencies regarding the allegations?**

- While the investigation is still underway, the EPA has accepted being the lead federal enforcement agency on December 26.
- The Army Corp of Engineers sent a Notice of Violation – Cease and Desist to PVJR on December 18.
- Department of Ecology reiterated to PVJR that they must apply for a permit, and shall perform no further work, including, moving dirt, until a permit with Ecology is in place. Additionally, Ecology advised PVJR to fill out a SEPA application in order for Ecology to evaluate and determine any other potential permits or regulations that may be needed.
- The EPA has taken jurisdiction over the constructed road and associated culvert installations adjacent to the rail line. DNR retains authority over the harvested area and issued a Notice to Comply to the landowner in June 2024 requiring reforestation by March 2025.
- The EPA transmitted a letter to PVJR on February 14, 2024, formally initiating a Clean Water Act enforcement action.
- Washington State Department of Ecology issued an Administrative Order on March 25, 2024, requiring Portland Vancouver Junction Railroad to comply with RCW 90.48, the State of Washington Pollution.

- Control Act. For questions about the Administrative Order please contact: Brittny Goodsell, Southwest Region Office (SWRO) Communications Manager 360.280.3704 [Brittny.Goodsell@ecy.wa.gov](mailto:Brittny.Goodsell@ecy.wa.gov)
- On April 24, 2024, PVJR filed an appeal of Administrative Order #22558 with the Washington Pollution Control Hearings Board (PCHB). For more information on this case please check the PCHB case manager: <https://eluh02022.my.site.com/casemanager/s/case/50082000002TtBE/detail>.

### **Have any actions been taken by the County regarding the allegations?**

- The County notified PVJR in November that their actions on County property (trespass, erosion, damage to stormwater, etc.) was in violation of Section 5.1 and Section 10 of the Agreement. Pursuant to Section 3.12.1.1 and Section 14 of the Agreement, the County met with PVJR to discuss the breach on December 8. The next step is to have a stormwater expert come in and assess the damage and determine the appropriate remedy.
- Clark County issued a letter to Portland Vancouver Junction Railroad outlining specific actions be taken to resolve the dispute resolution process started in November 2023.
- Upon receiving any definitive finding from the regulatory agencies, the County will move forward in accordance with the Agreement.
- The county notified PVJR on January 12, 2024, that it expects PVJR to fully cooperate with the Environmental Protection Agency, U.S. Army Corps of Engineers, and Washington Department of Ecology regarding allegations made in the December 18, 2023, Notice of Violation from the U.S. Army Corps of Engineers and the November 17, 2023, letter from the Washington Department of Ecology.
- The county notified PVJR on March 15, 2024, requesting development of a stormwater site plan to address water quality treatment and flow control for stormwater discharges from PVJR's property and the county railroad right-of-way, and requesting a response within 90 days.
- The county's deadline for a response to the March 15 letter lapsed on June 14, 2024. PVJR responded on June 14, with a request for additional time to submit a stormwater site plan. On July 17, 2024, the county responded in writing to this request for additional time by communicating its willingness to grant the request, provided PVJR meets certain conditions, namely that PVJR provides the county with the same information it has provided to the EPA and Ecology in conjunction with the ongoing enforcement actions of those agencies.

### **Can the County just terminate the Agreement with PVJR due to a breach?**

The County must abide by the terms in the Agreement. Section 3.12 of the Agreement outlines the termination provisions. As noted above, the County has invoked Section 3.12.1.1 and Section 14 as required for any breach of the contract, including, but not limited to, noncompliance with applicable federal, state, local laws (see Section 3.12.1.1 of the Agreement). Additionally, once the County has been notified of any final adjudication by the regulatory agencies, the County will proceed in the same manner, adhering to the terms of the Agreement. In part, Section 3.12 states:

*3.12.1 County's Termination Rights. The County reserves the right to immediately cancel and termination this Agreement in the event of:*

- 3.12.1.1 A material breach of any of the terms and conditions of this Agreement, including but not limited to substantive noncompliance with all applicable federal, state, local, and police requirements, regulations, ordinances, and laws, related to PVJR's operation, condition, inspection and safety of trains, locomotives, cars and equipment, which PVJR has not cured or taken reasonable steps to cure within 30 days of the completion of the dispute resolution process in Section 14 of this Agreement; or*
- 3.12.1.2 PVJR shall give the County written notice if PVJR ceases to provide rail service on any portion of the Line of Railroad by embargo, abandonment, or otherwise, except as otherwise allowed under this Agreement, without the County's consent. If within thirty (30) days of the County's receipt of written notice PVJR has not reinstated rail service and (1) PVJR has not cured the breach or (2) PVJR*

*has not taken all reasonable steps toward curing the breach, the County shall have the right but not the obligation to take possession of the Line of Railroad, and this Agreement will terminate.*

When the County has additional information, these Q/A's will be updated.

*Please note, the information provided in this document does not constitute legal advice or a legal opinion. If any community member wishes to discuss the legalities of the process, next steps, etc., community members may decide to retain an outside attorney for assistance.*

01.18.24/rev 3.25.24/rev 5.23.24/rev 7.11.24/rev 7.18.24