

BEFORE THE
SURFACE TRANSPORTATION BOARD

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Public Record

DOCKET NO. AB-1296X

**R. J. CORMAN RAILROAD PROPERTY, LLC
– ABANDONMENT EXEMPTION –
IN SCOTT, CAMPBELL, AND ANDERSON COUNTIES, TENNESSEE**

**APPLICANT’S RESPONSE TO THE PETITION TO REOPEN
OR TO VACATE FILED BY ANDERSON COUNTY, TENNESSEE**

R. J. Corman Railroad Property, LLC (“RJC Railroad Property” or “Applicant”), by counsel, submits its Response to the Petition to Reopen or to Vacate the Board’s June 26, 2020 abandonment authorization in this matter pursuant to 49 CFR § 1152.25(e)(4) and (6) (the “Petition”), filed by Anderson County, Tennessee (“Anderson County” or “Petitioner”) on October 13, 2020.¹

I. Introduction.

On June 26, 2020, the Board granted RJC Railroad Property an abandonment exemption for the railroad line extending from milepost 0.95 at or near Oneida, Tenn., to the end of the line at milepost 42.0 at or near Oneida, Tenn., a distance of approximately 41.05 miles in Scott, Campbell and Anderson Counties, Tenn. (the “Line”) and imposed NITU and public use negotiating periods. *R. J. Corman Railroad Property, LLC – Abandonment Exemption – in Scott, Campbell, and Anderson Counties, Tenn.*, Docket No. AB 1296X (STB served June 26, 2020).

¹ Arkansas-Oklahoma Railroad Co. joined Anderson County’s Petition on June 1, 2021. Significantly, the Branch in question is located primarily in Scott County, Tenn., not Anderson County, Tenn. Scott County, Tenn. is not a party to this Petition.

In the year since the abandonment decision was issued, RJC Railroad Property has successfully responded to various administrative petitions/appeals attempting to overturn the Board's denial of the offer of financial assistance filed by Arkansas-Oklahoma Railroad Co. ("AOK"). RJC Railroad Property has also in good faith engaged in mediation with AOK for the full mediation time period to resolve the OFA issue. Throughout the last year, AOK's purported desire to purchase the Line has been supported by the North East Tennessee Railroad Authority ("NETRA"). Mayor Terry Frank, as Anderson County Mayor, sits on the Board of NETRA. As outlined in prior filings by RJC Railroad Property, Ms. Frank and Anderson County have been aware of and involved in this abandonment proceeding since before RJC Railroad Property filed its notice of exemption in early 2020. (*See Applicant's Reply to appeal filed by NETRA filed July 9, 2020, at page 2*). Significantly, Anderson County never objected to or filed a formal protest to the abandonment proceeding prior to it becoming effective on June 26, 2020. Anderson County's efforts exclusively have been to support AOK's OFA. (*See May 11, 2020 and June 4, 2020 Letters filed by Mayor Terry Frank of Anderson County, Tenn.*).

For the reasons set forth below, Anderson County's Petition, asking the Board to reopen or revoke the abandonment exemption for the Line because it results in a stranded branch line that is within the jurisdiction of the STB should be denied. Recent public statements made by Ms. Frank demonstrate there is zero need for commercial rail service on branch and that the untimely Petition is filed in bad faith to "gum up" this proceeding. Moreover, Anderson County cannot establish the fundamental basis for their Petition, i.e. that Branch is within the Board's jurisdiction and was not abandoned consistent with the then existing law. At the time RJC Railroad Property purchased the Line, the branch in question had been severed from interstate commerce for decades. Nor can Anderson County establish that the alleged omission involving the Branch is material,

would have impacted the abandonment decision, or that revocation is necessary to carry out the Board's rail transportation policy.

II. Anderson County's Petition is Filed in Bad Faith.

The issue of the allegedly stranded Branch was interjected into this proceeding on February 18, 2021, when Ms. Frank filed a letter (the "Letter") with the Board. In it she claimed that: (1) the six (6) mile Beech Fork Branch ("Branch"), which connects to the Line, was not excepted track as a result of a 1921 Interstate Commerce Commission decision; (2) RJC Railroad Property was allegedly attempting to circumvent the Board's jurisdiction; and (3) the Branch would be stranded as a result of the abandonment. Ms. Frank asked the STB to investigate the matter and sought no further action. RJC Railroad Property responded to the Letter on February 23, 2021 disputing Ms. Frank's claims, including her assertion that RJC Railroad Property removed the Branch track.

Ms. Frank's Letter, however, was not motivated by a deep concern about shippers on the Branch not receiving service (as there are none), a future need for commercial service (as there is none), or even the Branch being stranded. It was, instead, an effort to create leverage for AOK to use against RJC Railroad Property immediately following the unsuccessful mediation. Ms. Frank's motivation is abundantly clear because during a public, live-streamed recorded meeting of the Anderson County Commissioners on May 17, 2021, Ms. Frank candidly admitted her purpose for raising the Branch issue. Starting at video timestamp 1:44:58, Ms. Frank addresses the Anderson County, Tennessee Commissioners. She specifically states that her Letter was "***an eleventh-hour Hail Mary***"² (video recording at 1:51:05) letting the Board know about the Branch and that she "***just hoped it would throw something into or gum it up a little bit.***" (Video recording at 1:51:28) (Emphasis added). She further goes on to tell the Commissioners that the Branch in

² A term typically referring to any sort of desperation play, a "Hail Mary" gradually came to denote a long, low-probability pass attempt, at the end of a half, implying it would take divine intervention to be successful.

question had been pulled up for a long time (contrary to her prior claim that RJC Railroad Property did it) and that if it is “something we could pull off, *that six miles would be a great rails to trails, partner area for actual physical hiking trails.*” (Video recording at 1:54:53-1:55:16)(Emphasis added). Accordingly, Ms. Frank does not see the preservation of the Branch as critical or even remotely necessary to any continued need for rail service. She wants it for hiking trails.

Using Mayor Frank’s own words, Anderson County’s Petition is another “Hail Mary” attempting to pressure RJC Railroad Property to sell the Line to AOK for less than net liquidation value, and contrary to its existing *bona fide* third party offer, or again, in Ms. Frank’s words, to get “*R. J. Corman to the table to negotiate a sale*” (Video recording at 1:49:10) – which statement completely ignores the fact that RJC Railroad Property has been in mediation and/or “at the table” with AOK for months. Moreover, Anderson County only filed the Petition after the Board denied AOK’s Motion for Reconsideration on May 3, 2021 even though it had been aware of the issue since at least February. Without question, Anderson County’s Petition is filed in bad faith and is a transparent attempt to gum up these proceedings. It is a waste of the Board’s time and resources, undermines its statutory purpose and should not be tolerated.

III. Branch Has Been Inactive Since at Least 2011 and Did Not Exist at the Time of RJC Railroad Property’s Purchase of the Line; Anderson County Cannot Establish the Branch Has Not Been Abandoned.

A. Historical/Regulatory Background Demonstrate Both of the Prior Owners of the Line Treated the Branch as Abandoned

As Ms. Frank explained during the May 17, 2021 Commission meeting, she was told by nearby residents that the Branch previously was abandoned years prior. (Video recording at 1:50:37). She provided this information to Anderson County’s attorney (then NETRA’s attorney), who located a 1921 decision authorizing construction of the Branch in question. *In the Matter of the Application of the Tennessee Railroad Company for a Certificate of Public Convenience and*

Necessity, 65 I.C.C. 654 (Jan. 12, 1921) (the “Decision”). In that 100-year-old Decision, the ICC approved Tennessee Railroad Company’s (“TRC”)³ application to operate six (6) miles of track to be built by the Beech Fork Timber Company. The ICC states that the timber holdings were expected to produce tonnage for about seven or eight years and that there was a possibility for haulage of coal at some point in the future. The Decision also states that other than coal and timber, “no other industrial development of any importance is possible in the region” due to the geography and “if the timber and coal should be exhausted at some future date, the applicant may desire to discontinue use of this branch.” Finally, it states that due to “diversity of ownership of the several tracts,” service was needed by a common carrier operating for the benefit of all shippers. The Decision, however, only identifies one shipper, who is the same shipper who agreed to build the track. The Branch has always been a stub-end track.

According to the Annual Report of the ICC (74 I.C.C. 216), Appendix D, TRC was in receivership as June 30, 1960. Southern Railway Company (now Norfolk Southern Railway (“NSR”)), purchased TRC out of bankruptcy in the 1970s. (August 26, 2004 Letter, filed as of record in AB-260 (Sub 259X)(Exhibit A, attached hereto). In addition, Finance Docket No. 27313, entitled *Southern Railway Company – Purchase and Operations – Tennessee Railroad Company* (not printed)(June 22, 1973), appears to document this transaction.⁴ What remained of the Branch and whether Southern Railway Company obtained authorization to operate the Branch in 1973 is unknown. It is also unknown if the Branch was abandoned (as TRC suggested it might in the 1921 Decision) during the 50-plus years prior to Southern Railway Company’s purchase of TRC from bankruptcy.

³ Tennessee Railroad Company appears to have been successor to the Tennessee Railway Company in 1918 and the names are at times interchanged.

⁴ The undersigned contacted the STB and requested a copy of the decision as well as any filings in the proceeding. The STB states that it does not have the records.

In 1988, Southern Railway Company and TRC filed an abandonment proceeding involving milepost TE-42.0, at Devonia, TN, and milepost TE-44.7 at Fork Mountain, TN. *Southern Railway Company and Tennessee Railway Company – Discontinuation of Service and Abandonment Exemption – Between Devonia and Fork Mountain, TN* (Docket No. AB-290 (Sub-No. 42X) (STB served October 12, 1988).

In early 2005, TRC sought permission from the STB to abandon the Line, in two segments, in two separate proceedings. *Tennessee Railway Company – Petition for Exemption – Abandonment – in Scott County, TN*, Docket No. AB-290 (Sub-No. 260X)(STB served Jan. 19, 2005) (involving milepost TE-0.95 near Oneida, and milepost TE-27.96 near Nicks Creek) and *Tennessee Railway Company – Abandonment Exemption – in Anderson and Campbell County, TN*, Docket No. AB-290 (Sub-No. 259X)(STB served March 18, 2005) (involving milepost TE-27.96 at Nick’s Creek and milepost TE-42.00 at Devonia). Significantly, neither abandonment proceeding referenced the Branch at all, and TRC did not request authority to abandon it. TRC’s filings, a portion of which is attached as Exhibit B, provides an extensive history of the Line, consistent with the information above.

Ultimately, the Line was not abandoned as National Coal Corporation (NCC), the remaining shipper, purchased the Line through the OFA process. Approval for that transaction is found in *Tennessee Railway Company – Abandonment Exemption – in Scott County, TN*, Docket No. AB-290 (Sub-No. 260X) *et. al.* (STB served March 3, 2006). NCC’s filings make no mention of the Branch and no STB approval was sought by, or provided to, NCC to purchase or operate the Branch. It is further relevant that NCC purchased the Line through the official OFA process; a process that is conducted under the Board’s authority and required Board approval.

In 2011, the STB approved RJC Railroad Property's purchase of the Line from NCC and its operation by R. J. Corman Railroad Company/Bardstown Line, LLC ("RJCR"). *R. J. Corman Railroad Property, LLC – Acquisition Exemption – NC Railroad, Inc.*, Finance Docket No. 35363 (STB served June 29, 2011); *R. J. Corman Railroad Company/Bardstown Line – Lease and Operation Exemption – R. J. Corman Railroad Property, LLC*, Finance Docket No. FD 35361 (STB served June 29, 2011). Like NCC – and possibly NSR, RJC Railroad Property and RJCR did not acquire authority to purchase and operate the Branch, only the Line.⁵ Nor is there any reason to conclude that NSR or NCC considered the Branch (whatever remained during their ownership) anything other than excepted track as the Branch has all the characteristics of excepted track (stub-end, built by one shipper to serve its needs). In fact, RJC Railroad Property reasonably relied on the STB's prior decisions, including the approval of NCC's OFA, in completing its purchase of the Line.

B. The Branch is Physically Severed from Interstate System, Has Been Severed for Years and Was Severed at the Time RJC Railroad Property Purchased the Line

Significantly, Anderson County's Petition fails to mention anything regarding the commercial need for the Branch, the Branch's condition or any overriding interest of interstate commerce for the Branch. Its omission is telling, particularly in light of the testimony outlined in the Affidavit provided by Eric West, the current Facilities General Manager for R. J. Corman Group, LLC, who was involved in the work done on and around the Line after RJC Railroad Property's purchase in 2011. (Affidavit of Eric West, Exhibit C). Mr. West describes in detail the condition of the Branch in or about 2011, provides photographs to assist in understanding the condition of the Branch and explains what limited action was taken by R. J. Corman Railroad

⁵ The new carrier has the same rights and obligations as the prior rail carrier. *Napa Valley Wine Train, Inc. – Petition for Declaratory Order*, 4 I.C.C.2d 720, 727-728 (1988).

Property with respect to the Branch. (See Exhibit C). According to Mr. West, who is a resident of Oneida, Tenn., the Branch is in Scott and Campbell County, Tenn. and has been out of service since the 1960s. In 2011, it was overgrown with mature trees growing up through what remained of the track. The Branch was long severed from the Line in as much as the local county government paved over the rails in constructing the New River Road sometime prior to RJC Railroad Property's purchase. The first mile of the Branch's right of way contained no track in 2011 and was graveled over, presumably by the local county, to provide access to a local cemetery. Entire sections of rail were simply gone from the right of way and portions of the right of way had been built over with storage sheds and other various buildings as well as paved over, by landowners. *Id.*

At one section of the Branch, near a church in Clinchmore, Tenn., an entire overpass/bridge was washed away due to flooding that occurred in the 1960s, based on what residents told Mr. West at the time.⁶ Thereafter, in the 1970s, a highway bridge was constructed over the river and the Branch's right of way. The footings for the former railroad bridge are under the new highway bridge. Given the height of the highway bridge, the county or state constructing the highway bridge effectively cut off any possible rail traffic along the Branch's right of way. *Id.*

In addition, Mr. West confirms that there was not six miles of track left on the Branch at the time RJC Railroad Property purchased the Line in 2011. Mr. West also confirms that RJC Railroad Property took no actions with respect to the Branch beyond the first two miles of the

⁶ The Department of Interior's Summary of Floods for 1965, relevant pages attached as Exhibit D, describes the flood in the area of Clinchmore, Tenn. in July of 1965 noting that "several bridges were washed away, roads were damaged by washouts or deposition of debris" and "the railroad and the county road which paralleled Stony Fork up to Clinchmore were completely destroyed." Such official record not only confirms the information provided by Mr. West, but further confirms how long the Branch has been out of service, gone and abandoned.

Branch given the condition and only then did RJC Railroad Property remove approximately one mile of spur track. *Id.*

C. Petitioner Cannot Establish Fundamental Facts Upon Which its Petition is Based

Based on the foregoing, Petitioner cannot establish the fundamental facts upon which its Petition is based. Petitioner cannot establish when the Branch track was taken up, by whom it was removed, or that it was not abandoned prior to NSR's purchase in accordance with the then applicable law under the ICC or state law adverse possession.⁷

Anderson County states on page 2 of its Petition that "upon extensive research of this branch line, there is no evidence that it has ever been abandoned at the ICC or STB." Such statement fails to carry Anderson County's burden of establishing the Branch is still within the STB's jurisdiction. It can just as easily be true that there is no evidence that the Line was *not* abandoned prior to 1973 (by continued nonuse or state law adverse possession), when NSR purchased the Line in bankruptcy. Also, given the lack of records that exist at the STB relating to this issue, Anderson County's assertion that it has engaged in extensive research, is nothing more than wishful thinking on its part.

Moreover, the overwhelming facts, including the regulatory history of the Line as well as the actual history and condition of the Branch in 2011, demonstrate that even if the Branch was not abandoned at the ICC, a *de facto* abandonment occurred prior to 1973. As held in *RLTD Railway Corporation v. STB*, 166 F.3d 808, 813 (6th Cir. Jan. 28, 1999), the STB may properly conclude that it lost jurisdiction over a stretch of track once its was severed from interstate commerce. Significantly, the Court of Appeals found the track in questions was severed because,

⁷ Any abandonment of the Branch predates 1996 when the current system for abandonment was adopted. *Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903*, 1 S.T.B. (STB served on Dec. 24, 1996).

“[s]ections of the southerly end of the RLTD’s line have been paved over....The stretch of track from Rennie’s Station to Traverse City has long been abandoned, and no other connection from the RLTD’s track to the interstate rail system exist.” *Id.* at 814.

In short, Anderson County believes it has successfully “gummed” up the abandonment proceeding as it nor RJC Railroad Property, due to a lack of historical records, can point to something in writing holding the Branch was abandoned. In contrast, all available information relating to the history and condition of the Branch confirms that the Branch was abandoned well before 1973, the date when NSR purchased the Line out of bankruptcy, and that the Branch is no longer under the STB’s jurisdiction.

IV. Anderson County’s Petition Fails to Establish Material Error, New Evidence or a Significant Defect in the Notice of Exemption.

A petition to reopen an administratively final action must state in detail the respects in which the challenged decision involves material error or is materially affected by new evidence or substantially changed circumstances. 49 CFR § 1152.25(e)(4) and (e)(2)(ii). Petitioner bears the burden of proof in establishing grounds to reopen. *Burlington Northern Railroad Company – Abandonment Exemption – Between Klickitat and Goldendale, WA*, Docket No. AB-6, slip op. at 3 (Sub-No. 346X)(STB served June 8, 2005). For purposes of reopening, “new evidence” means evidence that was not reasonably available to the parties before the agency’s original decision. *Platnick Bros., Inc. v. Norfolk & Western Ry. Co.*, 367 I.C.C. 782, 785 (1983); *Friends of Sierra R.R. Inc. v. ICC*, 881 F.2d 663, 667 (9th Cir. 1989). Petitions to revoke an exemption under 49 CFR § 1152.25(e)(6) require evidence of “a procedural defect (such as the loss of a properly filed protest, the failure of the applicant to afford the public the requisite notice of its proposed abandonment, etc.).”

The material error or new evidence relied on by Anderson County as well as the “procedural defect” is its assertion that RJC Railroad Property omitted a reference to the Branch resulting in what Anderson County refers to as an “active” rail line to become stranded. (Petition, p. 6). Anderson County has not just learned of the Branch’s existence, it is simply speculating based on a 1921 Decision that the Branch is still within the Board’s jurisdiction.⁸ Anderson County relies on three decisions⁹ which stand for the general proposition that the Board will not allow a segment of track to become stranded as a result of an abandonment.

However, unlike here, in each of the cases cited by Petitioner, one or more active shippers would lose rail service if the line or segment was stranded. Moreover, none of those cases raise any question about whether the line or segment had previously been abandoned as is the case here. Nor was RJC Railroad Property’s alleged omission of the Branch from its notice of exemption an attempt to avoid its carrier obligations and effect a *de facto* abandonment as Anderson County claims. First and foremost, the Branch was already severed from the Line at the time of RJC Railroad Property’s purchase. At the time of RJC Railroad Property’s purchase of the Line in 2011, the Branch track was largely removed and what remained of the right-of-way was so overgrown by forest that the length of time it had been unused was unquestioned. (See Affidavit of Eric West, Exhibit C). Nor did RJC Railroad Property remove six (6) miles of track or terminate service over the Branch. Furthermore, RJC Railroad Property’s omission of a reference to the Branch in the notice of exemption, is wholly consistent with the regulatory action taken by the two prior owners of the Line.

⁸ Anderson County’s belief that the Branch was within the STB’s jurisdiction is a fact that could have been discovered prior to the abandonment decision being issued on June 26, 2020.

⁹ *Central Oregon & Pacific Railroad, Inc. – Abandonment and Discontinuance of Service – In Coos, Douglas, and Lane Counties, OR*, STB Docket No. AB-515 (Sub-No. 2), slip op. at 12 (STB served Oct. 31, 2008); *Norfolk Southern Railway Company – Abandonment Exemption – In Baltimore County, MD*, STB Docket No. AB-290 (Sub-No. 237X), slip op. at 4 (served April 3, 2006); *Buffalo & Pittsburgh Railroad, Inc. – Abandonment Exemption – In Erie and Cattaraugus Counties, NY*, STB Docket No. AB-369 (Sub-No. 3X), slip op. at 7 (STB served Sept. 18, 1998).

Accordingly, Anderson County asks the Board to reopen or revoke an abandonment exemption that was granted a year ago based on its speculation that the Branch was not abandoned during the 50-year period prior to 1973 and where Anderson County knew of the Branch at the time the notice of exemption was filed and ***freely admits there is no shipper or commercial need for rail service on this Branch.*** (Emphasis added). Given this, there is no basis to conclude the alleged omission is a material justification to reopen or revoke the abandonment decision.

Moreover, inclusion of a reference to the Branch in RJC Railroad Property's notice of exemption would have had no material impact on the decision to authorize the abandonment exemption as there has been no service over the Line since 2013 and no service over the Branch during RJC Railroad Property's ownership of the Line and likely no service since the 1960s. Had the Branch been referenced in the notice of exemption, the same zip codes would have been included, and the same entities would have been notified, including Anderson County. The representation that there are no shippers on the Line, or the Branch would still be accurate. Similarly, the information provided in the notice of exemption, including the correct mileposts for the starting and ending point of the Line, permitted Anderson County (and anyone else who reviewed the local newspaper notices) to easily discern the impact the abandonment would have on the Branch. In short, the information in the notice of exemption was neither false nor misleading.

Even assuming Anderson County could establish the Branch is still under the Board's jurisdiction, which it cannot, the alleged omission is not material to the Line's abandonment as there is no overriding public need for freight rail service on the Line or the Branch.

V. **The Petition Should Be Denied as Untimely or Barred by Equitable Doctrine of Laches.**

Had Petitioner timely objected at the time the notice of exemption was filed on the basis now asserted, RJC Railroad Property still would have met all the requirements for abandonment of the Line and could have easily supplemented information about the Branch prior to it being granted – particularly given the delay in the abandonment exemption being granted due to AOK's OFA. But instead, Anderson County waited to raise the issue in February of 2021 and then waited another three months (until the Motion for Reconsideration was denied) to file the instant Petition.

Based on the circumstances, Anderson County forfeited its stranded-segment argument by not timely disputing it prior to the abandonment decision. *Norfolk Southern Railway Company – Petition for Exemption – In Baltimore City and Baltimore County, MD*, Docket No. AB 290 (Sub-No. 311X)(STB served May 4, 2010)(denying claims related to stranded line for reasons, including failure to timely raise). Such equitable doctrines, such as laches, are proper grounds for denying a petition to reopen or revoke. *Consolidated Rail Corporation – Abandonment Exemption – in Erie County, NY*, Docket No. AB-167 (Sub-No. 1164X), slip op. at 5 (STB served Oct. 7, 1998). In addition, 49 CFR § 1152.25(e)(i) provides a 15-day time period for filing a petition to reopen an abandonment proceeding under paragraph (e)(4). Failure to comply with that time period is grounds for denial of a petition to reopen. *Union Pacific Railroad Company – Abandonment – Wallace Branch, ID*, Docket No. AB-33 (Sub-No. 70), slip op. at 3, fn. 9 (STB served Nov. 14, 2000).

VI. **Unique Factual Circumstances Justify Permitting the Abandonment Decision to Remain in Place; Reopening or Revocation of the Exemption Do Not Further Board Policy.**

Even if the Board concludes there are grounds to find that the Branch remains within its jurisdiction, the unique factual circumstances justify permitting the abandonment decision to

remain in place. *See Sierra Northern Railway – Abandonment Exemption – in Yolo, County, CAL.*, Docket No. AB 874 (Sub-No. 1X)(STB served June 22, 2020)(allowing abandonment to proceed even with stranded line was reasonable and in public interest). For example, in *ABE Fairmont, LLC – Abandonment Exemption – in Fillmore County, Neb. et al.*, Docket No. AB 1106X, slip op. at 4-5, (Sub-No. 488X)(STB served Jan. 29, 2018), the STB retroactively waived a notice of consummation requirement for a line that would be stranded as result of the abandonment. There, petitioners pointed to unique factual circumstances, including the fact that the railroad line owner no longer existed as a corporate entity, the principle former owner was deceased and the real estate underlying the segment had been sold. *Id.*

Here, no rail traffic has moved over the Branch during the time of RJC Railroad Property's ownership of the Line. Based on the history of the Line, no rail traffic has moved over the Branch since the 1960s – certainly not after the 1965 flooding. As Ms. Frank readily admits, there is no commercial need for rail service on the Branch; she wants it for trails. Likewise, given the actions by the county or state to sever the Branch, i.e., paving over the track for a road, installing a gravel road over the right of way, and building a highway bridge that prevents rail traffic on the right of way, the ownership of the real estate underlying the right-of-way may have reverted to landowners, as SRC, NCC and RJC Railroad Property acquired their rights by quit claim deed.

Reopening the abandonment or revoking the abandonment for the Line at this late date accomplishes nothing other than delaying RJC Railroad Property's exercise of its property rights with respect to the Line and Anderson County will have succeeded in gumming up the process.

VII. Conclusion.

For the reasons set forth above, the Petition is not supported in law or fact, and RJC Railroad Property respectfully requests the Board to deny the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2021, I served the foregoing Response using the below email addresses on all parties of record in this proceeding:

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August 26, 2004

Mr. Jerry E. Cross
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Re: Proposed Rail Line Abandonment: Nick's Creek to Devonia, TN -
Milepost TE 27.96 to Milepost TE 42.00 (formerly referenced as TE 41.60).

Dear Mr. Cross:

This letter responds to your letter of June 3, 2004 to our Mr. Keith Miller asking for clarification of the right-of-way (ROW) information contained in the Environmental Report for the proposed Nick's Creek-Devonia, TN rail line abandonment. You asked us to clarify what portion of the right-of-way is owned by Tennessee Railway Company and "what areas are controlled by other ownership entities." I think you have misunderstood the meaning of the information provided in Section 3(i) Land Use Plans of the report and I hope this will clarify that paragraph.

For the purposes of possessing the right-of-way for railroad purposes, and owning and operating the line of railroad, Tennessee Railway Company, a subsidiary of Norfolk Southern Railway Company, completely controls the right-of-way and the railroad. No entity other than Norfolk Southern or its subsidiaries owns or controls any part of the right-of-way as a railroad line or controls or has any say in its operation in any respect.

The right-of-way ownership information in the land use plans paragraph of the environmental report is provided in order for the Surface Transportation Board to determine whether the underlying real estate is owned in whole or in part by the railroad in fee simple. If the railroad owns the real estate comprising the right-of-way in fee simple, it will still own that real estate after the line is abandoned. That might provide a continuous corridor for other uses such as highways and the STB might impose a 180-day "public use condition" on an abandonment. That means that the railroad could only dispose of the line for public use for 180 days, although it would be free to deal with it as it chose if no agreement were reached within that period.

If the real estate comprising the right-of-way is held by the railroad only by easement, that real estate most likely will revert to the fee simple owners of the real estate upon the railroad line's abandonment. The principal exception would be if the line is converted to a trail under the National Trails System Act. A public entity that wanted the entire right-of-way for some other purpose would have to deal not only with the railroad, but any other property owners. Condemnation might be

necessary in some cases. All this real estate ownership information would be relevant as to whether the contemplated use of the right-of-way after the abandonment (if known) is consistent with local land use plans or could fit in with them. It has no bearing on the current operation of the railroad line or on its abandonment. The underlying fee interest holders have no current say about the use of the property by the railroad or about the discontinuance of rail service over it.

As we see it, the information concerning the ownership status of the real estate that comprises the right-of-way, including whether any of the right-of-way is held by easement, is not relevant in at least four situations: 1 with respect to the current possession, use and operation of the rail line; 2 with respect to the transfer of the rail line to another railroad, such as a short line, for continued railroad purposes (although the overall percentage ownership interest might have some effect on the price that another railroad would pay for the property if that were in issue); 3 with respect to whether the railroad line can be abandoned (which means the permanent end of rail service on the line as approved by the STB, not forfeiture of any property owned by the railroad in fee simple); and 4 whether a trail can be established on the right-of-way under the provisions of the National Trail Systems Act. The U. S. Supreme Court has ruled that trail use can be maintained on right-of-way held by easement, because the trail user must convey the line back to the railroad at any time that the railroad decides to restore the rail line over the right-of-way. So railroad purposes for the right-of-way may not be abandoned forever under such circumstances.

The precise real estate ownership status of individual parcels of the right-of-way is not important until the railroad disposes of the property, or a party claims an interest in any of the property as the underlying fee owner, either of which must come after the abandonment authority or exemption from the STB is exercised by the railroad, and without the property being converted to a trail. It is enough at this stage to determine whether the railroad alone can convey title to the entire right-of-way. Our records, which are likely incomplete and would be subject to confirmation through the County records before final action is taken with respect to any parcel or portion of the right-of-way, disclose that Tennessee Railway Company was not the fee owner of all the underlying real estate.

We have no maps that would disclose the current identity of any parties that might be underlying fee interest holders to which any parcel or portion of the real estate comprising the right-of-way of the rail line might revert if the rail line were abandoned and not replaced by trail use. Inasmuch as the entire rail line is possessed and controlled entirely by Norfolk Southern's Tennessee Railway Company subsidiary, the map submitted with report identifies the location of the rail line sufficiently to show the points and general direction in which it runs and its end points. This conforms to the STB requirements. You might get additional detail from U. S. Geological Survey maps of the County, which I assume you have available or can obtain. These maps will not give you any real estate ownership information, but will give some additional detail as to the location of the rail line.

Tennessee Railway Company, sometimes known as Tennessee Railroad Company, started as an independent short line about 1904. Norfolk Southern Railway Company's predecessor, Southern Railway Company, bought the property out of bankruptcy in the 1970s. The records that were inherited may or may not be complete. It is sufficient at this point that they identify some property as having been held by easement.

In general, a railroad would have no interest in identifying easement segments while the railroad is operating over a right-of-way. It would have no reason to keep track of or otherwise to know the identity of the successors, if any, to the parties who conveyed an easement, rather than a fee interest, in any parcel of the right-of-way 100 or more years ago. If it became necessary to have or verify that information, we would have to consult the County records.

Jerry E. Cross, Mayor
Re: Nick's Creek - Devonia
August 26, 2004
Page 3

If your purpose is simply to identify the current parties who hold any underlying fee interests in any part of the railroad right-of-way, the County can do that through a search of local records more easily than the railroad can. If the County has some definitive proposal for disposition of the right-of-way or any segment of it in the County, in line with the land use planning or other public purposes for which the information in the environmental report is sought, we will work with you to find or confirm the ownership status of that property in order to determine the feasibility of the County's plan or the identity of other parties with which the County must deal (other than for trail use where the information does not matter).

I trust that this has provided you with sufficient information to clarify the matters raised in your letter.

Sincerely,



M. C. Kirchner
Director-Strategic Planning

Cy: J. R. Paschall
K. R. Miller
L. G. Western
J. M. Lipps

HISTORIC REPORT
PROPOSED RAIL LINE ABANDONMENT

PROPOSED ACTION AND ALTERNATIVES

Tennessee Railway Company, a wholly owned subsidiary of Norfolk Southern Railway Company (NSR) proposes to abandon 14.04 miles of rail line between milepost TE-27.96 at Nick's Creek and milepost TE-42.00 at Devonia, in Campbell and Anderson Counties, Tennessee. A map delineating the line proposed for abandonment is attached as Appendix "A".

The alternatives to abandonment of the line are to not abandon or to discontinue service on the line, retaining the trackage in place. Neither of these alternatives is economically feasible for NSR.

ADDITIONAL INFORMATION

- 1) **U.S.G.S. Topographic Map** -- Maps were furnished to the Tennessee Historical Commission.
- (2) **Written Description of Right of Way** -- The right of way width varies but is generally 50 feet on each side of the main track centerline. The line passes through forest (80%), pasture (10%), residential (5%) and commercial (5%) areas.
- (3) **Photographs** -- Photographs were furnished to the Tennessee Historical Commission.
- (4) **Date of Construction of Structures** -- Construction dates are shown on the Bridges and Structures Listing attached to this report.
- (5) **History of Operations and Changes Contemplated** -- The Notice of Exemption to the Surface Transportation Board (STB) to abandon a line of railroad of Tennessee Railway Company, a wholly-owned subsidiary of Norfolk Southern Railway Company, that is related

to this report, and this report itself, concern an approximately 14.04-mile railroad line between Milepost TE-27.96 at Nick's Creek, Tennessee and Milepost TE-42.0 at Devonia, Tennessee (the "Line"). The Line was part of the approximately 44.65-mile railroad line between Oneida, Tennessee and Fork Mountain, Tennessee that was built between 1904 and 1908 by a predecessor, also named Tennessee Railway Company. The subject segment of the Line is in Campbell and Anderson Counties, Tennessee. There have been no shipments along this segment of the Line for several years. The current Tennessee Railway Company, a successor to the company that built the Line, has been a wholly-owned subsidiary of Norfolk Southern Railway Company and its predecessor, Southern Railway Company, since 1973.

The original Tennessee Railway Company was chartered April 19, 1904 according to company records. The company was incorporated May 17, 1904, under the general laws of the State of Tennessee according to the Interstate Commerce Commission (ICC) valuation report, which was dated as of June 30, 1918. The Tennessee Railway Company established its headquarters at Oneida, TN. The Tennessee Railway Company was chartered to operate an approximately 45.0-mile line of railroad between Oneida, TN and Fork Mountain, TN.

The Tennessee Railway Company line was constructed mainly to serve coal mines in the vicinity of the New River. The Tennessee Railway also served several sawmills along its line during its early years of operation.

The Tennessee Railway was operated by its own organization until it entered receivership on July 1, 1913. Bird M. Robinson was the receiver.

Tennessee Railway Company initially acquired 8.51 miles of private railroad line from Bird M. Robinson on July 13, 1904. A secondary source identifies this private railroad line as

the line of the Paint Rock Coal and Coke Company. This railroad line consisted of a 6-mile segment between Oneida, TN and Jakes Branch, TN and 2.51 miles of branches and spurs.

The exact dates of construction of these private railroad line segments have not been determined and were not reported to the ICC in connection with the valuation of the company's property, but are assumed to be between 1897 and 1904.

The Tennessee Railway Company extended the line approximately 23 miles from Oneida, TN to Smokey, TN by 1907 and another 12 miles to Straight Fork, TN by 1908. By 1912, the Tennessee Railway Company line reached the vicinity of Fork Mountain, TN. Its highest total track mileage, including spurs and yard tracks, was between 63 and 65 miles at its completion in 1918.

In addition to the line acquired from Mr. Robinson, Tennessee Railway Company constructed 56.67 miles of railroad line as follows:

- 4.00 miles between Jakes Branch, TN and River Junction, TN, 1904-1905;
- 20.00 miles between River Junction, TN and Beech Fork, TN, 1905-1910;
- 14.23 miles of branches and spurs, 1905-1910;
- 2.5 miles of main line extensions, 1910-1913;
- 2.5 miles of branches and spurs;
- 8.22 miles of main line extensions, 1913-1918;
- 5.22 miles of branches and spurs, 1913-1918;

Tennessee Railway Company abandoned 8.73 miles of line prior to June 30, 1918.

Despite the rugged terrain where the Line is located, in 1918, the ICC identified only one metal bridge on the entire Tennessee Railway Company line, a 150-foot through-truss span on two concrete piers over the New River. The bridge is not further identified. We assume the bridge was a predecessor of the bridge over the New River that is located at Milepost TE-40.46. The current bridge at that location, which is shown in NSR's bridge list as two sets of spans totaling 254.48 feet in length, was rebuilt in 1981. The other structures on

the line evidently were wooden trestles or bridges that were subsequently replaced. NSR records indicate the early structures on the line have been replaced over the years with metal or more modern materials. The Line was lightly graded and mostly full earth surfaced. Only the first mile was ballasted with cinders. A full timbering and re-surfacing was performed in 1989 but revenue levels have not justified re-investment in the Line other than routine maintenance work since that year. The Line was constructed with 75, 70 and 60 pound per yard re-lay rail, which was improved to 70 to 112 pound rail by the time of Tennessee Railway Company's acquisition by Southern Railway Company in 1973.

The only connection of the Tennessee Railway Company to the national rail system at the time it was built was, and its only connection subsequently has been, with the line of Southern Railway Company's Cincinnati, New Orleans and Texas Pacific Railway Company subsidiary (lessor of the Cincinnati Southern Railway line), at Oneida, TN.

The records available to the ICC in 1918 showed that the Tennessee Railway Company received no aids, gifts, grants or donations in connection with the construction of its railroad line.

Tennessee Railway Company's property was sold at foreclosure on February 14, 1918 and was surrendered on February 15, 1918 to J. N. Baker, trustee for the purchasers. The purchasers reorganized the company as Tennessee Railroad Company on June 28, 1918.

On June 30, 1918, Tennessee Railroad Company, Tennessee Railway Company's successor, operated a 41.222-mile line between Oneida, TN and a point about 3 miles beyond Rosedale, TN, with a 4.987-mile branch line between Smoky Junction, TN and Newland, TN that subsequently has been abandoned. It also owned 14.329 miles of yard track and sidings on June 30, 1918. The Tennessee Railway Company line was

subsequently extended approximately 3.43 miles to Fork Mountain, TN later in 1918. At some point not disclosed by company records or other research, a segment of the Line between Milepost 42.0 at Devonia, TN and Milepost 44.65 at Fork Mountain, TN was abandoned.

The papers of Samuel Spencer, first president of Southern Railway Company, in the Manuscripts Department, Library of the University of North Carolina at Chapel Hill Southern Historical Collection #3477 contain materials from 1915-1919, of his son, Henry B. Spencer, relating to the Tennessee Railway Company.

A receiver for the Tennessee Railroad Company was appointed on January 22, 1921 but the company was able to work out its financial problems and the proceeding subsequently was dismissed.

An iron furnace at LaFollette in Campbell County closed in 1926.

Tennessee Railroad Company entered into receivership on July 1, 1959 and operated under receivership until it was acquired by Southern Railway Company. The company was re-incorporated in Tennessee as Tennessee Railway Company on January 15, 1973 in anticipation of its reorganization by Southern Railway Company. Southern Railway Company had agreed to acquire the Tennessee Railway Company, subject to ICC approval, in September 1972.

Tennessee Railway Company was acquired by Southern Railway Company out of receivership on August 1, 1973 for 20,000 shares of Southern Railway Company common stock, pursuant to ICC approval in ICC Finance Docket No. 27315. The former Tennessee Railway Company line commonly has been known as the Oneida Branch since its acquisition by Southern Railway Company.

All common stock of Tennessee Railway Company (100 shares of no par common voting stock) is currently held by Norfolk Southern Railway Company. As of the preparation date of this report, Tennessee Railway Company owned 42 miles of railroad line between Oneida, TN and Devonia, TN.

Southern Railway Company was incorporated under the laws of the Commonwealth of Virginia on June 18, 1894. Southern Railway Company was successor to Richmond and West Point Terminal Railway and Warehouse Company (incorporated in 1880) and its subsidiaries, including principal subsidiaries Richmond and Danville Railroad Company (1847), the East Tennessee, Virginia and Georgia Railway Company (1887), Charlotte, Columbia and Augusta Railroad Company (1869), Virginia Midland Railway Company (1880), Columbia and Greenville Railroad Company (1880), Western North Carolina Railroad Company (1880) and Georgia Pacific Railway Company (1881). Except for leased lines of the Atlanta and Charlotte Air Line Railway Company (1877) and the North Carolina Railroad Company (1868), these railroads were declared insolvent and placed in receivers' hands in 1892. In 1894, they were sold at foreclosure sales and deeded to the Southern Railway Company, which also then leased the Atlanta and Charlotte Air Line Railway Company and North Carolina Railroad Company properties. Southern Railway Company acquired several other smaller companies in 1894. After its acquisitions and leases in 1894, Southern Railway Company operated 4,432 miles of railway, 3,940 miles of which were owned and 492 miles of which were leased.

Norfolk and Western Railway Company was incorporated by special act of Virginia approved on January 15, 1896, and succeeded, under a plan of reorganization, to the properties of Norfolk and Western Railroad Company, the Lynchburg and Durham Railroad

Company (that had been sold first to the Norfolk, Lynchburg and Durham Railroad Company) and the Roanoke and Southern Railway Company (that had been sold first to the Norfolk, Roanoke and Southern Railroad Company). The two companies in parentheses were organized on the dates of purchase for the sole purpose of acquiring and transferring the property of the named companies to Norfolk and Western Railway Company.

Norfolk Southern Corporation, a non-carrier holding company, was incorporated in the Commonwealth of Virginia on July 23, 1980. Based on an Agreement of Merger and Reorganization, dated July 31, 1980, and eventual Interstate Commerce Commission (ICC) approval, Norfolk Southern Corporation acquired control of Norfolk and Western Railway Company and Southern Railway Company and their subsidiaries. At the time of the Norfolk Southern consolidation, Norfolk and Western Railway Company was headquartered in Roanoke, Virginia. Southern Railway Company was headquartered in Washington, DC with a substantial number of offices in Atlanta, Georgia.

On December 4, 1980, Norfolk Southern Corporation, Norfolk and Western Railway Company, and Southern Railway Company filed a joint application to the ICC in Finance Docket No. 29430 (Sub-No. 1), pursuant to which they sought authority under 49 U.S.C. 11343 for Norfolk Southern Corporation to acquire control through stock ownership of Norfolk and Western Railway Company and its subsidiary carrier companies, and of Southern Railway Company and its consolidated system companies.

Under approval granted by the ICC in Finance Docket No. 29430 (Sub-No. 1), Norfolk Southern Corporation -- Control -- Norfolk and Western Railway Company and Southern Railway Company, 366 I.C.C. 173 (1982), dated March 19, 1982, Norfolk Southern Corporation acquired control of Norfolk and Western Railway Company and Southern

Railway Company on June 1, 1982.

Two books on the Norfolk and Western Railway Company and Southern Railway Company systems provide detailed information on their history and development to the time of the Norfolk Southern consolidation. They are: E. F. Pat Striplin, *The Norfolk And Western: A History* (Roanoke, VA: The Norfolk and Western Railway Co., 1981) and Burke Davis, *The Southern Railway: Road Of The Innovators* (Chapel Hill, NC: University of North Carolina Press, 1985).

Effective December 31, 1990, Southern Railway Company changed its name to Norfolk Southern Railway Company. Norfolk and Western Railway Company became a wholly-owned subsidiary of Norfolk Southern Railway Company rather than a subsidiary of Norfolk Southern Corporation.

As of August 30, 1996, NSR's wholly-owned subsidiary, The Cincinnati, New Orleans and Texas Pacific Railway Company, renewed its lease of the line of railroad of the Cincinnati Southern Railway under an agreement with the City of Cincinnati expiring in 2026, with the option to extend 25 years to December 31, 2051 (which must be exercised on or before January 1, 2022).

Pursuant to a notice of exemption filed in STB Finance Docket No. 33648, Norfolk Southern Railway Company--Merger Exemption--Norfolk and Western Railway Company, served August 31, 1998, Norfolk Southern Railway Company (NSR) merged Norfolk and Western Railway Company (NW) into NSR, effective September 1, 1998.

Norfolk Southern Corporation ("NSC"), parent to Norfolk Southern Railway Company ("NSR"), entered into a Transaction Agreement (the "Conrail Transaction Agreement") among NSC; NSR; CSX Corporation ("CSX"); CSX Transportation, Inc. ("CSXT"), a wholly-

owned subsidiary of CSX; Conrail Inc. ("CRR"); Consolidated Rail Corporation ("Conrail"), a wholly-owned subsidiary of CRR; and CRR Holdings LLC, dated June 10, 1997, pursuant to which CSX and NSC indirectly acquired all the outstanding capital stock of CRR. The Conrail Transaction Agreement was approved by the Surface Transportation Board ("STB") in a decision served July 23, 1998 in STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation. The transaction was closed and became effective June 1, 1999.

Pursuant to the Conrail Transaction Agreement, certain Conrail assets were allocated to Pennsylvania Lines LLC ("PRR"), a wholly-owned subsidiary of Conrail. Furthermore, pursuant to the Conrail Transaction Agreement, PRR's assets, in turn, were leased to and were operated by NSR under the terms of an allocated assets operating agreement between PRR and NSR (the "NSR Operating Agreement") with an original term of twenty-five (25) years from the effective date of June 1, 1999, and two optional renewal terms of five (5) years each. The Conrail Transaction Agreement permitted NSR to operate and to enter into various transactions with regard to the assets allocated to PRR.

On June 4, 2003, Norfolk Southern Corporation (NSC), CSX Corporation (CSX), and Consolidated Rail Corporation (Conrail) announced the joint filing of a petition with the STB for approval to establish direct ownership and control by CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR), the railroad subsidiaries of CSX and NSC, respectively, of the two Conrail subsidiaries - New York Central Lines LLC (NYC) and Pennsylvania Lines LLC (PRR) that CSXT and NSR had been managing and operating, respectively, since June 1, 1999 under operating agreements approved by the STB in the

1998 decision. The STB approved the petition, subject to certain conditions, in a decision served on November 7, 2003. The effect of the transaction, which was concluded on August 27, 2004 by the merger of NYC and PRR into CSXT and NSR, respectively, was to replace the operating agreements and allow NSR and CSXT to operate the NYC and PRR lines via direct ownership.

Anderson County was established by an act of the General Assembly of Tennessee passed on November 6, 1801. Its 2000 population was 71,330. Many of the residents live and work at Oak Ridge, TN, or the County seat of Clinton, TN, neither of which are located on the subject railroad line. Campbell County is located in Northeast Tennessee on the Kentucky-Tennessee border. It was formed in 1806 from parts of Anderson and Claiborne Counties. The 2000 federal census showed a population of 39,854 for Campbell County. Today more than forty small and medium industries employ more than 25 percent of the county's work force, providing 2,294 jobs, according to a web site about the county. The web site also indicated that tourism and the service industry employ more than half of the county's workers. The Tennessee State Library and Archives has compiled a large Bibliography of Tennessee Local History Sources with many books and publications about these counties, lists of which can be found on its web site.

Abandonment of the Line, and subsequent salvage of railroad materials from the Line, will have no adverse effect on pre-historic, or historic archeological sites if there are any along the Line. If any such sites existed immediately below the surface of the Line, those sites would have been disrupted during construction of the Line. Salvage operations, which take place on the surface of the land and involve picking up salvageable material, would not disturb any archaeological sites that might exist in the area.

The change contemplated in the operation of the Tennessee Railway Company railroad line between Nick's Creek, TN and Devonia, TN is for the Tennessee Railway Company, a wholly-owned subsidiary of Norfolk Southern Railway Company, to abandon the subject unused and unprofitable line of railroad, to salvage the track and material from the Line and to the extent of its title to the real estate to deal with the right-of-way as ordinary real estate no longer subject to a common carrier obligation.

(6) **Summary of Documents In Carriers' Possession That Might Be Useful for Documenting a Structure That Is Found To Be Historic** – Bridge plans may be available for the structures on the line.

(7) **Opinion Regarding Criteria For Listing In The National Register Of Historic Places** – It is carriers' opinions that the structures on the line to be abandoned do not meet the criteria for listing in the *National Register of Historic Places*. The structures are bridges which are short in length and relatively modern and ordinary in design and construction. There is nothing that distinguishes the bridges from others in the region. Carriers have no reason to believe that there is any likelihood of finding archaeological resources or historic properties on the line proposed for abandonment.

(8) **Subsurface Ground Conditions That Might Affect Archaeological Recovery** – Carrier is not aware of any prior subsurface ground disturbances or environmental conditions that would affect archaeological recovery.

(9) **Follow-Up Information** – Additional information will be provided as appropriate.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1296X

**R. J. CORMAN RAILROAD PROPERTY, LLC
– ABANDONMENT EXEMPTION –
IN SCOTT, CAMPBELL, AND ANDERSON COUNTIES, TENNESSEE**

AFFIDAVIT OF ERIC WEST

I, Eric West, make the following statement, freely and voluntarily, based on personal knowledge:

1. I am over the age of 18 and the Facilities General Manager for R. J. Corman Railroad Group, LLC. I have worked with R. J. Corman Railroad Group, LLC and its affiliated companies since 2004.
2. R. J. Corman Railroad Property, LLC (“RJC Railroad Property”) purchased the Oneida Line, which is the subject of the above-referenced abandonment proceeding, in 2011. Shortly after the purchase, I was involved in work on the Line, including removing some old, unused excepted track along the Line.
3. I live in Oneida, TN and am familiar with the Line, including the Beech Fork Branch (the “Branch”) in Campbell and Scott Counties, TN that at one time existed near Stonybrook, TN.
4. At the time I was working on the Line in or about 2011, the Branch was entirely overgrown with mature trees and other brush. Given the size of the trees growing through cross ties, it was apparent to me that no traffic had been on the Line for many years and I understood from locals that I spoke with that the Branch had not been used since the 1960s.
5. At the time I was working on the Line in or about 2011, large sections of track had been cut out and removed from the Branch, presumably by local landowners. For example, at the far end of the photograph, attached as Exhibit C-1, it shows where a railroad bridge at the edge of a heavily forested area. That railroad bridge is approximately two miles into the former six-mile Branch. To be clear, R. J. Corman did no work beyond the railroad bridge in this photograph.
6. In addition, in the foreground of Exhibit C-1 is a dirt area where the track leading to the railroad bridge has been removed. In 2011, that track was already gone; R. J. Corman Railroad Property did not remove the track leading to the railroad bridge. This photograph (Exhibit C-1) was taken by me on June 10, 2021.
7. At that time and still today, the Branch does not connect to the Line because the county paved over the track to install a county road, New River Road. This is shown in the photographs attached as Exhibits C-2 and C-3. Looking at the photograph, a few rails, largely buried, are evident on each side of the road’s pavement. The right of way of what was the Branch, then continues across the road toward the white house in the photo. For approximately one mile beyond the New River Road, until you reach a cemetery, there are no rails. The rails had already been removed when I was present in this same area in 2011. In addition, the county graveled over the right of way to provide access to the cemetery. The gravel road is seen in Exhibit C-2 and C-3, as it curves away from the driveway to the white house.
8. Beyond the cemetery, is where RJC Railroad Property removed approximately one

mile of track.

9. I also observed in or about 2011 several instances where local landowners built storage sheds or other buildings on the Branch's right of way. The photographs attached as Exhibit C-5 and C-6 show a building on the Branch's right of way and demonstrates the size of the trees growing through the track. I took the photograph on June 10, 2021, but it is consistent with what I saw in 2011.
10. In another area along the right of way, near a church in Clinchmore, a bridge or overpass that was at one-time part of the track, was completely gone. It is my understanding the bridge had been washed out due to flooding in the 1960s.
11. In addition, Exhibits C-7 and C-8 are photographs of a highway bridge built in the 1970s following the flooding. That bridge was built over the railroad's right of way and renders it impossible for rail traffic to occur. Prior to the flood, there was a railroad bridge that crossed the river and then the track followed along the river. The railroad bridge is gone (its footings are under the bridge shown in the photograph) as well as the track and the current highway bridge blocks the right-of-way.
12. I recall that there were multiple sections along the Branch's right-of-way where the track was paved over by local landowners at some point prior to RJC Railroad Property purchasing the Line.
13. In addition, in or about 2011, I personally checked property records at the clerk's offices for Scott and Campbell County, TN to confirm RJC Railroad Property's ownership of real estate before taking any action to remove rail along the Branch.
14. Between the track that was already gone, paved or built over, RJC Railroad Property only removed a small portion of track associated with the Branch and that would have totaled less than one mile of track.

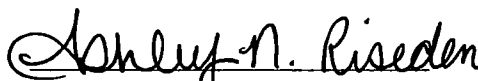
I have reviewed this statement, which consists of 14 paragraphs, and hereby solemnly swear that it is true and complete to the best of my knowledge and belief.


ERIC WEST

STATE OF TENNESSEE)

COUNTY OF Scott)

Subscribed and acknowledged before me by Eric West this 11th day of June ____ 2021.
My Commission Expires: 6-22-2022


NOTARY PUBLIC

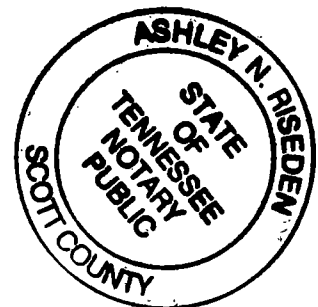


EXHIBIT C1



EXHIBIT C2



EXHIBIT C3



EXHIBIT C4



EXHIBIT C5



EXHIBIT C6



EXHIBIT C7



EXHIBIT C8



Summary of Floods in the United States During 1965

By J. O. ROSTVEDT and others

FLOODS OF 1965 IN THE UNITED STATES

GEOLOGICAL SURVEY WATER-SUPPLY PAPER 1850-E

*Prepared in cooperation with
Federal, State, and local agencies*



UNITED STATES DEPARTMENT OF THE INTERIOR

WALTER J. HICKEL, *Secretary*

GEOLOGICAL SURVEY

William T. Pecora, *Director*

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TABLE 29.—*Flood stages and discharges in the Cumberland River basin, July 24, in southeastern Kentucky*

No.	Stream and place of determination	Drainage area (sq mi)	Maximum floods					Discharge	
			Known before July 1965		July 1965	Gage height (feet)	Cfs	Reurrence interval (years)	
			Period	Year					
1	Bennetts Fork at bridge on State Highway 74 at Middlesboro.	13.5			24	97.89	3,300	(1)	
2	Yellow Creek bypass at Middlesboro.	35.3	1941-65	1951	24	4.72	6,580		
3	Yellow Creek near Middlesboro.	58.2	1929, 1939-65.	1946		6.16	10,900	² 1.4	
						20.92	6,160		
4	Cumberland River near Pineville.	809	1929, 1938-65.	1957	24	20.77	11,400	50	
						49.31	57,900		
					24	28.54	17,500	<2	

¹ Unknown.² Ratio to 50-year flood.

Railroad structures and highways were damaged along Bennetts Fork and Straight Creek, and some dwellings were damaged or destroyed. There was no loss of life.

FLOODS OF JULY 24 IN THE VICINITY OF CLINCHMORE, TENN.

By WILLIAM J. RANDOLPH

An intense rainstorm occurred over a section of the rugged slopes of the Cumberland Mountains at the Anderson-Campbell County line (fig. 40) in the early morning of July 24. The most intense part of the storm covered about 25 sq mi along the divide between the Cumberland and the Tennessee River basins about 6 miles southwest of Lake City, and the maximum rainfall in this area occurred on the divide. There were no rain gages within the area of the greatest rainfall intensity; however, a bucket survey made by the Tennessee Valley Authority indicated rainfall amounts in excess of 12 inches, most of which fell within the 3-hour period from 0130 to 0430 hours on July 24. This is three times the amount of the 100-year 3-hour rainfall for this area (U.S. Weather Bureau, 1961). Rainfall gages about 15 miles north and northeast of the storm center recorded 4-5 inches.

The streams in the storm area are relatively small headwater streams having steep slopes. Hardest hit were Stony Fork and Graves Gap Branch on the western side of the divide. From information obtained by the TVA from local residents, peak stages occurred abruptly, the rate of rise on Stony Fork above Clinchmore (sta. 4) being about 10 feet in 15 minutes. The peak had moved from the headwater to the mouth by about 0430 hours.

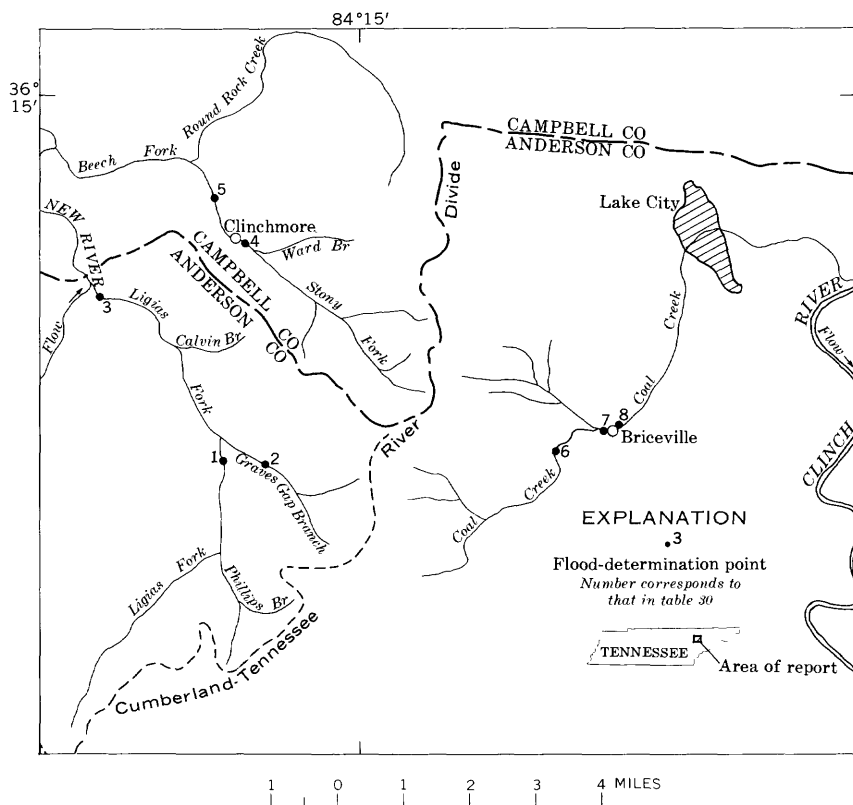


FIGURE 40.—Location of flood-determination points, floods of July 24 in the vicinity of Clinchmore, Tenn.

There are no stream-gaging stations in the area of heaviest runoff. Eight indirect measurements of peak discharge were made at miscellaneous sites by the Geological Survey and by the TVA (table 30). The sites at which peak discharges were determined are shown in figure 40. The most outstanding flood (1,940 cfs per sq mi from an area of 6.34 sq mi) occurred on Stony Fork above Clinchmore.

Damage from the flood was limited by the sparse settlement in this rugged country. However, almost everything in the narrow valleys was damaged. Several bridges were washed away, roads were damaged by washouts or deposition of debris, and several automobiles were demolished. Five persons drowned near Clinchmore when their house and several others were washed away. Several other houses were washed off their foundations or otherwise damaged. The railroad and the county road which paralleled Stony Fork up to Clinchmore were

TABLE 30.—*Flood stages and discharges, July 24, in the vicinity of Clinchmore, Tenn.*

No.	Stream and place of determination	Drainage area (sq mi)	Maximum discharge	
			Cfs	Cfs per sq mi
Cumberland River basin				
1	Ligas Fork above Graves Gap Branch...	8.99	3,430	382
2	Graves Gap Branch near mouth.....	3.16	3,890	1,230
3	Ligas Fork near mouth.....	20.4	9,750	478
4	Stony Fork above Clinchmore.....	6.34	12,300	1,940
5	Stony Fork below Clinchmore.....	7.67	13,500	1,760
Tennessee River basin				
6	Coal Creek above Briceville.....	5.36	2,000	373
7	Slatestone Hollow Branch near mouth....	3.66	500	137
8	Coal Creek at Briceville.....	10.3	2,500	243

completely destroyed. Tremendous amounts of rock, uprooted trees, and other debris were washed down the sides of the mountains and deposited in the streams and narrow valleys.

This flood is described in more detail by the Tennessee Valley Authority (1965).

FLOOD OF JULY 26 NEAR ECHO, OREG.

By D. D. HARRIS

A severe cloudburst on July 26 caused flash floods in a small area in western Umatilla County, Oreg., southeast of the town of Echo (fig. 41). The storm was centered over an area south of the Umatilla River near Nolin and extended into the upper Butter Creek basin. The resultant flash flood demolished a house at the mouth of Speare Canyon and swept away its six occupants. One person was drowned, and the others were injured. Flooding in Lane Canyon destroyed a Union Pacific Railroad bridge near the canyon mouth. Heavy erosion occurred throughout the cloudburst area. Considerable amounts of hay and wheat were flattened, washed away, or buried under layers of silt, rock, and other debris.

Local residents stated that most of the rain fell in about half an hour and was accompanied by much hail. The storm was most severe in the upper parts of the watersheds which are uninhabited; therefore, no measurements of precipitation intensities were made in these areas.

Extremely high peak discharges of the July 26 flood were measured by indirect methods at two sites: 28,500 cfs (5,650 cfs per sq mi from 5.04 sq mi) near the mouth of Lane Canyon and 14,600 cfs (635 cfs per sq mi from 23.0 sq mi) near the mouth of Speare Canyon. The degree of gully erosion indicated that the entire Lane Canyon drainage