

## VIA ELECTRONIC FILING

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Katherine Stephenson  
PO Box 282  
Procious, WV 25164

August 15, 2021

Ms Cynthia T Brown  
Chief Section of Administrative Office of Proceedings  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20423

RE: Docket # AB13140 X The Elk River Railroad, Inc.--Abandonment Exemption--in Kanawha and Clay Counties, WV

Dear Ms Brown:

This filing is a follow-up to my earlier letter/filing July 25, 2021, and will deal with a completely separate challenge to the Abandonment Exemption request. I maintain that The Elk River Railroad, Inc.(TERRI) acted in **bad faith** in their 1992 acquisition of the Railroad Right of Way, at least between Heartland and Reamer. As you know, that stretch of railroad had been officially abandoned by the B&O in 1979, and tracks removed in the early 80's. Unless the ROW is repurchased for the purpose of rebuilding a railroad, all of the ROW tracts should have reverted to the original owners (in this case their heirs and successors). See Exhibits A/A1 & B/B1(originals and retyped) as samples of the original ROW grants to CC&S Railroad, the predecessor of the B&O. (There are numerous others like this that can be obtained at the Clay County Assessor's office.) They clearly indicate the ROWs were granted for the "purpose of constructing a railroad."

In their filing with the ICC to acquire the land through Eminent Domain, TERRI stated that they **were going to rebuild the railroad**. To meet Railroad Transportation Policy, TERRI stated that the purpose of this new line would be to transport high quality low sulphur coal "**from reserves estimated to exceed 500 million tons**" and also to "create new markets for TERRI-originated coal." It was predicted by TERRI that "between one and four million tons of coal per year would be moving over the line" between Heartland and Falling Rock (near Reamer). This application for the "rebuild" was made in **January 1992**, at which time William Bright was the owner and CEO of TERRI.

Just one year earlier, **December 1991** William Bright sued Coastal Lumber, et al. to terminate a lease he had obtained to mine coal on approximately 7000 acres. The reason being? There was no mineable or marketable coal located on the land. It appears Bright had actually stopped making the royalty (lease) payments in 1988, when Coastal sent him a default notice. The term

of the lease was for 10 years, 1986 through 1996. In addition to having no marketable coal to  
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haul on his new RR line, at least from that source, Mr Bright had to pay \$418,000 to Coastal in damages, as per the court's decision.

In 1989, a year after he defaulted on the lease payments, Mr Bright (Bright Coal Group) sold about half that company's coal interests to NERCO. He also sold coal properties to Consolidated Coal Co. around the same time. In his application to the ICC for a "rebuild" of the abandoned line, Mr Bright indicates he had other sources of coal to fulfill his grandiose projected shipments. However, the previous proprietor of the line (CSXT) professed to "see little prospect that sufficient future traffic would materialize to justify the line's retention." (see footnote on Page 2 of the Application).

Considering the above circumstances at the time, and the tremendous costs of rebuilding and maintaining a railroad, there is a real question of whether TERRI's stated reasons for the acquisition were disingenuous, i.e. **bad faith**. This obviously raises questions about possible other reasons for TERRI wanting to acquire a 28+ mile stretch of RR bed that runs all along a beautiful river...reasons that would not comply with Railway Transportation Policy for acquisition purposes.

There is, of course, a mountainous collection of other evidence that TERRI never intended to rebuild the railroad, and much of this has already been submitted to you by other concerned parties. A brief synopsis however, TERRI never initiated the slightest move to repair the ROW in preparation to lay tracks, after they got approval from the ICC to assume ownership. They never put up gates or "NO Trespassing". In fact, TERRI implicitly allowed free travel over the road and even allowed persons to lease sections of the ROW. TERRI never objected to the state paving over a section of roadway at Queen Shoals, which the residents use to access their homes. There is even a large gas compression plant on and along the ROW just north of the Queen Shoals area. Why would TERRI be so amenable to "trespassers" over all these years? A valid answer might be that TERRI did not want to bring attention to the fact that the ROW should have reverted back to original owners after abandonment by the B&O. Essentially, they wanted to lull the natives into a false sense of security, while they worked on their plans to acquire the land through the ICC under false pretenses, then later sell it to the state. I submit for your consideration an issue of STB's jurisdiction if, indeed, TERRI knowingly misrepresented their intentions to the ICC regarding use of the ROW. Essentially, STB's jurisdiction would be like the fruit of the poisoned tree.

Obviously there will be multiple lawsuits by property owners if TERRI succeeds with abandonment, and land takings occur for railbanking. My legal research of case law on this issue is admittedly paltry, but I think I know who will prevail and who will ultimately pay. To bad it has to be the US taxpayers.

Sincerely,

Katherine Stephenson

CC: All parties of record

## Attachments

CC&S RR Co

This deed made the 18th day of October 1895. Between Frank Schoonover and Emma S.

Schoonover of Clay County West Virginia of the first part and the Charleston, Clendenin and

Sutton Railroad company, a corporation of the State of West Virginia of the second part ,

Witnesseth, That for and in consideration of the sum of one Dollar receipt whereof is hereby acknowledged, the said part of the first part do grant and convey with general warranty unto the said party of the second part a section of land twenty five feet wide, that is to say twelve and one half feet on each side of the centre [sic] line of the Railroad as finally located by the party of the second part through the lands of the said grantors, which lands of the said

grantors situated in Clay County West Virginia, and more particularly described as follows to

wit: beginning at station 2138-75 of the CC&S RR and extending up Big Sycamore Creek through the property of the party of the first part for a distance of 1565 feet as located on a

plat herewith filed together with right of way for the proposed change in the highway made necessary by the building of this sidetrack as a further consideration of this conveyance, the said party of the second part is to make a permanent station at the lower side of Big Sycamore for the construction, operation, maintenance, enjoyment and use of a railroad of two or more

tracks with appurtenances; together with such additional land as shall be necessary for the

slope of the cuts, fills, ditches and appurtenances; the sum of money and other considerations aforesaid is hereby taken and received in full satisfaction for the land, rights and privileges

above conveyed, as well as for any damages to the resid[ice] of the land from which the same are taken. Witness the following signature and seal.

DF [?] Schoonover E.S.  
Schoonover

State of West Virginia County of Clay to wit: I Hiram Lewis a  
Notary Public of the said county of

Clay Do certify that DF Schoonover and Emma S. his wife  
whose names are signed to the within;

hereto annexed bearing date the 18th day of October 1895  
have this day acknowledged the same before me in my said  
County. Given under my hand, this 2nd day of November,  
1895. H.

Lewis, Notary Public

JM Pierson to Clendenin C & S RR Co This deed, made this  
23 day of January 1895 between Charleston C & S RR Co. JM  
Pierson and Sarah Jane Pierson, his wife of the first part and  
the Charleston Clendenin and Sutton Railroad Company, a  
corporation of the State of West Virginia of the second part.

Witnessed: that for and in consideration of the sum of one  
hundred dollars, receipt whereof is hereby acknowledged, the  
said part of the first [does?] grant and convey with general  
warranty unto the said party of the second part, a section of  
land 66 feet wide, that is to say 33 feet on each side of the  
center line of the railroad as finally located by the said party of  
the second part, through the lands of the said grantors are  
situated in Clay County West Virginia and most particularly  
described as follows, to wit: lying immediately above the banks  
of John and William P. Walker and also adjoining the lands of  
Savann Gosham and Company on the south side of Elk River,  
and the said parties of the first part is to have the right to move

his fruit trees and fencing of over [over] the right of way if  
necessary for the construction, operation, maintenance,  
enjoyment and use of a railroad of two or more tracts and  
appurtenances together with such additional land as shall be  
necessary for the slopes of the cuts, fills ditches, berms, spoil  
banks and borrow pits and appurtenances, and together with  
such other things as may be reasonably necessary to fully  
enjoy and use the same, [.] The sum of money aforesaid is  
hereby taken and received in full satisfaction for the land rights  
and privileges above conveyed as well as for any damages to  
the residence [residents] of the land from which same was

taken. Witness the following signatures and seal JM Pierson  
Sarah J. Pierson State of West Virginia, County of Clay. to wit:

I(?) J H Mullins a Notary Public of said County of Clay, do  
certify that JM Pierson and Sarah Jane his wife, whose names

are signed to this writing hereto annexed bearing date the 23  
day of January 1895