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Office of Proceedings  
September 1, 2021  
Part of  
Public Record

J David Morgan

507 Chandler dr

Point Pleasant, WV 25550

1399 Scenic River Rd

Procious, WV 25164

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Ms. Cynthia T. Brown,

**Chief Section of Administration Office of Proceedings Surface  
Transportation Board 395 E Street, S.W. Washington, D.C.  
20423**

**Re: Docket No. AB 1314X, The Elk River Railroad, Inc. – Abandonment  
Exemption – In Kanawha & Clay Counties, WV**

Dear Ms. Brown,

I am addressing four different areas of concern pertaining to AB 1314 X as follows:

(1) **(Costs)** I formerly Request the STB submit the abandonment to OMB or other governmental budgetary authority for review before a decision is made based on government cost, more specifically, a Budgetary Impact Analysis – 2021. There needs to be an in depth analysis of the compensatory damages that may result. In addition, it should be reviewed by the state budget office in respect to DNR costs, DOT costs and tax losses of respective counties.

(2) **Safety** The state currently has 13,000 abandoned wells which they can't police currently. Accessibility will make this problem even worse as many of these wells lie adjacent to the proposed Rails to Trails. Compensatory damages come from a fund whose source of funds are gas taxes and a reclamation fund set up by such. This will greatly affect the ability for the state of WV to address the current backlog of 13,000 gas wells around the state, many of which lie in the Clay and Kanawha County area. Obviously, there is an underfunding issue currently which will only worsen once future compensatory damages are paid "Federal courts have long held that landowners whose property abuts a rail line being converted into a recreational trail are entitled to compensation under the takings clause of the Fifth Amendment."

The Court of Federal Claims in Washington D.C. only hears cases for compensation against the federal government. The funds for the compensation come from the "Judgment Fund" at the U.S. Department of the Treasury, which is appropriated every year by Congress to pay the liabilities of the United States. A decision made by one

federal agency that will directly affect another federal agency should be reviewed by the OMB as well the WV State Budget Office.

3. **(Health and Safety)** The state should consider the costs and maintenance of building access roads to land locked residents. Queen shoals (River Haven Rd.) is a prime example where the current road is leased to the WVDOT by TERRI which replaced a former dangerous road crossing over the mountain. Currently school busses and a public transportation system (KRT) utilize this road currently under a 2-year renewable lease with TERRI which has indicated this will all be revoked with a 90 day notice once the rail road is abandoned. Other notable well populated areas are Camp Creek (lease exists here also) (Basil Hively and Scenic River Rd) both north and south and the Heartland area (Beachy Rd) with similar problems with “abandoned” state access roads almost 40 years ago.

*Many of the above issues involve the safety and health issues of current local residents abutting this proposed trail/abandonment. should this move towards fruition.*

*(4) Historical      Located within the proximity of the rails to trails Is an Area known as Indian Wells. One such well exists at 1391 Scenic River road. There is only a passing note as to historical studies done in this area. More in depth studies need to be done locating such historical places that exist along this proposed route. There also exists 3 cemeteries dating back to the 1800's which were not mentioned by TERRI in their initial filing.*

“Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development Tribal Directory Assessment Tool to identify federally recognized tribes that may have ancestral connections to the project area.<sup>3</sup> The database indicates that there are five federally recognized tribes that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way or APE of the proposed abandonment. The tribes are: the Alabama-Coushatta Tribe of Texas; the Coushatta Tribe of Louisiana; the Eastern Band of Cherokee Indians; the Eastern Shawnee Tribe of Oklahoma; and the Muscogee (Creek) Nation. OEA is sending a copy of this Draft EA to these tribes for review and comment.”

**(5) Misinformation (TERRI)** It is my understanding that the requirement by the STB that a rails to trails system and thusly a railroad right of way must a minimum of 66 feet. TERRI claims as such in their initial filing (“66 feet Minimum ROW Width”). I will attach several deeds from Clay County property records which refutes that claim. The STB should ask TERRI to provide a complete title

search and survey of said property proving such claims including tax records/receipts from the entire 58.4 mile stretch. (see attached deeds below reflecting 50-60 easements only). This alone disqualifies the abandoned railroad line from being converted to a rails to trails as it does not meet the minimum requirements of 66 feet in width in STB regulations in reference to RTC.

**I would ask that the STB continue to hold this proceeding in abeyance/or deny until such questions are answered or clarified.**

**I would also like to point out at this time that a section of the trail has been completed already between Queen Shoals and Clendenin before abandonment has been completed. Possible misuse of funds depending on the outcome of these proceedings.**

**Thank you for your consideration,**

**J David Morgan**

**304-675-5929**

**jdmorg@suddenlink.net**

**CC: " All Parties of Record"**

*Brandt VS United States, no 12-1173*

*Jackson Vs United States*

*Boyer Vs United States*

*Hodges Vs United States*

*Biery v. United States. Pankrantz v. United States, Bishop v. United States*

*Palmer v. Commissioner of Internal Revenue Service*

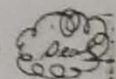
Clay County Deeds pages 375, 378, 379, 380 appearing below:

M H Frame

To

Whereas the Baltimore Cincinnati and Western  
 Cal. Impria. & Western R.R. Railway Company a Corporation organized under the  
 provisions of the act of the legislature of West Virginia known as chapter 88 of the  
 acts of 1872-3, propose to construct a railway through the lands of the undersigned  
 and for that purpose desire the right of way and land necessary for such consti-  
 tution Now therefore this Contract witnesseth that the undersigned M H Frame  
 of Clay County and State of West Virginia for and in consideration of one  
 dollar in hand paid by the said Company the receipt of which is hereby  
 acknowledged do hereby agree to grant the right of way of the width of Sixty  
 feet with the necessary slope through his lands situate in Clay County on  
 both sides of Elk River between of a house and lot in the town of Henry  
 consisting of two tracts one of Fifty acres on the South side of Elk River known  
 as the Sawyers Tract and lying on said river about one half mile from Red House  
 Shoal down the other tract lies on North side Elk River between Little Laurel and  
 big Spreaders and contains about Fifty acres to the said Baltimore Cincinnati and  
 Western Railway Company for the purpose of constructing a railway and do hereby  
 agree to release to said Company all claims for damage which may be sustained by  
 him by reason of such construction through the same and he do hereby covenant  
 and agree to execute and acknowledge in due form of law when required by said  
 railway Company a deed conveying to said Company the lands necessary for the  
 right of way as aforesaid provided however that said Company shall enter upon the  
 actual construction of their said Road through said lands within fifteen months  
 from this date otherwise this Contract shall be void at the option of the said Frame  
 Witness the following Signature and Seal this Thirty first day of August 1881.

M H Frame



State of West Virginia Clay County Sd.

I J P Stephenson Clerk of the County Court of Clay County do certify that  
 M H Frame whose name is signed to the writing above bearing date on the Thirty  
 first day of August 1881, has this day acknowledged the same before me in my  
 said County Given under my hand this Thirty first day of August 1881

J P Stephenson Clerk

State of West Virginia Clay County Court Clerk's office Nov 1st 1881.

This Contract together with the certificate thereto annexed was this day received in  
 said Office and Admitted to record

Teste

J P Stephenson Clerk

John E. Sirk  
To

Whereas the Baltimore Cincinnati  
and Western Railway Company a corporation org-  
anized under the provisions of the act of the Legislature of West Vir-  
ginia Chapter 98 of the acts of 1872-3 propose to construct a railway through  
the lands of the undersigned and for that purpose desire the right  
and land necessary for such construction now therefore this be-  
forem said John E. Sirk of Clay County a  
single man do hereby acknowledge do hereby agree to grant the right of way of  
Sixty feet with the necessary slopes through his lands situate on the  
bank of Elk River between Snake and Okimus creek adjoining John  
and being the land he obtained of the Charles H. Duffields estate to  
Baltimore Cincinnati and Western Railway Company for the purpose  
of a railway and does hereby release to said Company all claims for  
damages which may be sustained by him by reason of such construction to  
himself or on account of the temporary use or occupancy of or damage to  
adjacent thereto by said Company during the construction of said  
road and he does hereby covenant and agree to execute and acknowledge  
such forms of law when required by said Company as a deed conveying to  
said Company the lands necessary for the right of way as aforesaid for  
the purpose that said Company shall enter upon the actual construction  
of said road through said lands within Eighteen months from this date  
and if a failure to do so within said time this contract shall be void and  
of no effect of the said Sirk. Witness my hand and seal this 21 day  
of June 1881.

John E. Sirk

State of West Virginia Brantley County ss

I A. H. Corley a Notary Public of said County do certify that John E. Sirk  
name is signed to the writing above bearing date on the 21 day of June  
this day acknowledged the same before me in my said County Brantley  
my hand this 21 day of June 1881

A. H. Corley

State of West Virginia Clay County Court Clerk's office Nov 7<sup>th</sup> 1881

This contract together with the certificate thereto annexed was this day  
said office and admitted to record

Teste

A. H. Corley

William O Walker

To

Whereas the Baltimore, Annapolis and Western Railway Company a corporation organized under the provisions of the act of the Legislature of West Virginia known as Chapter 88 of the acts of 1872-3 propose to construct a railway through the lands of the undersigned and for that purpose desire the right of way and land necessary for such construction Now therefore this Contract Witnesseth that the undersigned William O Walker of Clay County and State of West Virginia for and in consideration of \$150. one hundred and fifty dollars to be paid as hereinafter stated to the said Walker by said Company and for the further consideration of one dollar in hand paid the receipt whereof is hereby acknowledged do hereby agree to grant the right of way of the width of fifty feet with necessary slopes through his lands situate in Clay County West Va. at the mouth of Camp Creek being a distance on Elk River of about one mile said road not to run near Elk River than the Patowmack and Ohio Rail Road to run its line and the said railway Company shall agree to make proper cattle guards at each end of said Walker field and also to prepare crossings for the use of said Walker in passing from his back lands to his front lands to the said Baltimore, Annapolis and Western railway Company for the purpose of constructing a railway and doth hereby release to said Company all claim for damages which may be sustained by him by reason of such construction through the same or on account of the temporary use or occupancy of or damage to the lands adjacent thereto by said Company during the construction of said railway and he doth hereby covenant and agree to execute and acknowledge in due form of law when required by said railway company a deed conveying to said Company the lands necessary for the right of way as aforesaid upon the payment to the said Walker of the full consideration as above stated provided however that said Company shall enter upon the actual construction of their said road through said land within Eighteen months from this date on in case of a failure to do so within said time this Contract shall be void at the option of the said William O Walker Witness the following Signature and Seal This 17 day of March 1881.

W. O. Walker

W. O. Walker

State of West Virginia Clay County ss.

I Ralph King a Notary Public of said County do certify that William O Walker whose name is signed to the writing a foregoing date on the 17<sup>th</sup> day of March 1881 has this day acknowledged the same before me in my said County Entered under my hand this 17 day of March 1881.

Ralph King N.P.

State of West Va. Clay County Court Clerk's Office Nov 1<sup>st</sup> 1881.

This Contract together with the certificate thereto annexed was this day received in said office and admitted to record

Teste

A. J. Stephenson Cler.

Ralph King  
To

Whereas the Baltimore, Cincinnati and Western  
Railroad and Western R.R. Company a corporation organized under the  
act of the Legislature of West Virginia known as chapter 88 of the acts of  
1876 propose to construct a railway through the lands of the undersigned and  
purpose desire the right of way and land necessary for such construction  
therefore this contract witnesseth that the undersigned Ralph King of Clay  
County State of West Virginia for and in consideration of dollars to be paid as hereinafter  
provided to the said King by said Company and for the further consideration of one dollar  
hereby acknowledged doth hereby agree to grant a right of way of the width of sixty feet with necessary slopes through his lands situate  
in Clay County on the south bank of Elk river being the land on which said  
now resides and which lands are said river between the lands of David Con  
Francis Kershaw a distance of about 120 poles now it is to be understood  
The construction of said road the Little bottom land where said Kings home  
is situated shall be taken by said railway Company then the said Company  
to pay to said King full damages for said bottom land so taken to the  
Baltimore and Western Railway Company for the purpose of constructing  
Railway and does hereby release to said Company all claims for damages  
aforesaid which may be sustained by him by reason of such construction  
the same or on account of the temporary use or occupancy of or damage to  
adjoining lands by said Company during the construction of said railway  
he doth hereby covenant and agree to execute and acknowledge in due  
of law and as required by said railway Company a deed conveying to said  
Company the lands necessary for the right of way or aforesaid upon the  
to him the full consideration for damages as above stated provided however  
said Company shall enter upon the actual construction of their said road  
said land within Eighteen months from this date and in case of  
to do so within said time this contract shall be void at the option of  
Ralph King witness the following Signature and date this 17 day of March 1881

State of West Virginia Clay County S.S.

I Ralph King a Notary Public of said County do certify that the  
whose name is signed to the writing above bearing date on the 17th  
March 1881 has this day acknowledged the same before me in my  
presence under my hand this 17th day of March 1881. Ralph King

State of West Virginia Clay County Court Clerk's office Nov 1st 1881.

This contract together with the certificate thereto annexed was this day