

VIA ELECTRONIC FILING

Katherine Stephenson
PO Box 282
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September 7, 2021

302979

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

ENTERED
Office of Proceedings
September 7, 2021
Part of
Public Record

RE: Docket # AB1314 0 X The Elk River Railroad, Inc.--Abandonment Exemption--in Kanawha and Clay Counties, WV

Dear Ms. Brown:

This is a follow up to my previous letter, in which I provided copies of original deeds to support the case for reversionary rights of property owners adjacent to the railroad tract abandoned by B&O Railroad in 1979. Specifically this pertains to the 28 mile (MOL) tract between Hartland, Clay County and Reamer, Kanawha County, WV. Those deeds clearly implied the original intent of landowners was to grant a right of way only for the purpose of Railroad construction and use. Enclosed is a deed with much more specific language to the effect that the conveyed section of land was not to be used for any other purpose by the Grantee OR their successors. Along with the original deed, I have attached a typed copy of the pertinent excerpts. (These are underlined on the original for your reference). The tract of land referred to in the deed is located near Little Sycamore, approximately one third of the way between Hartland and Reamer, coming from the direction of Hartland.

We have an organization SOAR (Save our Access Road) that is now working to procure additional documentation about the B&O official abandonment in preparation for legal challenges and damage suits if The Elk River Railroad is wrongfully allowed to abandon this section for rail banking purposes (thus Rails to Trails conversion). It appears the corridor in question is not even part of the National Rail system, and we are working to acquire the necessary documentation to that effect. How many times can a railroad be abandoned?

As indicated in my first filing letter, this particular 28 mile corridor is NOT the typical ROW where the disputed tract simply passes thru landowner's property. This abandoned ROW is the ONLY ingress/egress for home and property owners along the 28 or so miles. Due to the rugged terrain (which should be self-evident from the documentation you already have on file), there is no economically feasible way to provide an alternate access road, or roads, for all the

persons along the corridor. In short, Rails to Trails will land lock numerous persons. Therefore, the lawsuits will not be for “diminished value” only. Property owners will be seeking the full value of their property including homes, buildings and any business activities all along the corridor. Most all of these parties have recently received letters from a large law firm that specialize in recovering damages due to these “Takings”. I suspect these firms do not solicit to this this degree unless they feel confident in their cases. At this time, we are trying to stop the process before lawsuits become necessary. None of us wants to get “compensation”, because we do not want to lose our homes at all. It would cause unspeakable hardships on many, many people.

As indicated, we are still gathering documentation to establish that TERRI has no legal right to abandon this particular section of the previously abandoned B&O line. It is interesting that TERRI and The WV Rail Authority keep referencing the BC&G section of the railroad. TERRI may have a legitimate right to abandon that section, since it was still somewhat operational at the time of TERRI’s filing. However, it is quite problematic that they are trying to include the 28 mile corridor between Hartland and Reamer as part of their “railway system”. It is not and was not an operational railroad after 1979. Furthermore this official abandonment took place BEFORE the Rails to Trails law went into effect. How can this be retroactively applied? These are questions we submit for further review and response.

Another challenge that arises is one involving TERRI’s possible violations of your own regulations, if indeed TERRI was the legal proprietor of the corridor in question. TERRI “acquired” said corridor in 1991/92. With that acquisition, the company had certain obligations as shown in the attached Notice by the Transportation Department and Surface Transportation Board on 04/23/2008. Below that excerpt, I have outlined some of TERRI’s actions that appear to violate regulations. Supporting documents and photos are attached and labeled.

I feel confident that you have reviewed the original B&O filing for Abandonment, along with letters and documentation pertaining to prior actions by TERRI and CSX RR.

In closing, I would like to emphasize the adverse effects that the Rails to Trails program would have on Clay County and its residents, as well as all the home and property owners along the RR line. If property owners cannot get to their homes and camps, most will likely move once they get compensation (and they will). Clay County is one of the poorest counties in WV, and it would lose thousands of dollars in property taxes. Local businesses would suffer drastically. No matter how many bicyclists use the trail, they would never make up for the year around revenue provided by residents. Further revenue comes from the numerous ATV riders, campers and families that now use the trail for recreation because they can access it by

motorized vehicles (remember it is the ONLY access road in and out) Bear in mind, the trail use would be limited to only a few months out of the year for cyclists due to weather. In a larger sense, it is just morally wrong to cut off access along nearly 30 miles of scenic river for the benefit of so few and to the detriment of so many. In addition to the legal challenges that may exist, I implore the STB to consider the very special circumstances of this case before making a final decision.

Sincerely,

Katherine Stephenson

Enclosures:

- 1 Original Wetherell Deed
- 2 Typed excerpts from deed
- 3 Notice by the Transportation Board and STB 04/23/2008, with possible violations noted
- 4 Exhibits referenced in Notice & Violations

CC: all parties of record

PERTINENT EXCERPTS: DEED FROM MARY S. WETHERELL TO CC&S RR 1895

(SEE FULL ORIGINAL DEED ATTCHED WITH EXCERPTS UNDERLINED)

In consideration of the sum of One Dollar...the party of the first part doth grant and convey, with warranty unto the party of the second part a section of land sixty six feet wide that is to say: Thirty three feet on each side of the center line of the Railroad as now located by the party of the second part through the land of the party of the first part, which land is located on both sides of Middle, a tributary to the Elk River in Clay County, and extends along the El River from the mouth of Leatherwood Creek...FOR THE CONSTRUCTION, OPERATION, ENJOYMENT AND USE OF A RAILROAD OF TWO OR MOE TRACKS...

BUT IT IS HEREBY SPECIFICALLY PROVIDED AS A COVENANT RUNNING WITH THE LAND CONVEYED THAT THE SAID GRANTEE, ITS SUCCESSORS AND ASSIGNEES SHAL NOT USE SAID LAND FOR OTHERWISE THAN THE PURPOSES ABOVE SET FORTH AND SHALL ALLOW THE SAID GRANTOR ALL (?) RIGHTS ON THE ELK RIVER AND THE FULL FREE AND UNINTERRUPTED RIGHT OF WAY OVER, UNDER AND ACROSS SAID PARCEL OF LAND HEREIN CONVEYED FOR THE MINING OF MINERALS OF ANY KIND AND THE GETTING OUT OF TIMBER, OR FOR OTHER PURPOSES.

May 21, 1870
C. C. & P. R. Co.

BOOK 008 PAGE 065

This deed, made the 1st day of
September (May), 1870, by and
between Henry A. Wallace, widow,
of the City of Philadelphia and State
of Pennsylvania, part of the first part, and the Chester, Cin-
cinnati and Northern R.R. Co., a corporation
organized under the laws of West Virginia, part of the second
part, witnesses that the part of the first part, in and in con-
sideration of the sum of five hundred dollars in hand paid,
the receipt whereof is hereby acknowledged, and the
certain and definite premises hereinafter contained,
the part of the first part doth grant and convey, with
warrantable title, a certain parcel of land, situate, lying and
containing a section of land, situated just west of the
line of the R.R. Co. on each side of the center line
of the R.R. Co. as now located by the part of the second
part, through the land of the part of the first part, which
land is located on both sides of Middle Creek, a
tributary of Elk River, in Clay County, and extends
along the River from the mouth of Chestnut Creek
downward and west to the line of lands belonging to
J. D. Cameron and others, a portion of which is
hereby the right of way being granted being indicated
and the width of the same being fixed in the office
of the Clerk of the County Court of Clay County, for the con-
struction, operation and maintenance of a railroad,
and use of a railroad of two or more tracks with
appurtenances, together with such additional land
as during the course of construction shall be found
necessary to be taken, and shall then be taken for
the slope of the cut, ditches and appurtenances.
But it is hereby specifically provided, as a covenant
running with the land hereunder, that the said grantee,
its successors and assigns, shall not use
said land for other than the purposes
above set forth, and shall allow across the said
grantee all riparian rights on Elk River and the
first part and uninterrupted right of way over, under
and across said parcel of land taken hereunder for
the running of a railroad of any kind, and the getting
out of timber, or for other purpose, by men, carts,
animals, wagons, cars, trucks, and other appliances;
but such crossings shall be made under the super-
vision of the engineer of said railroad Company.
It is further provided that the said Railroad Company shall
provide and maintain suitable switches and side tracks
within said right of way sufficient to accommodate the
said part of the first part, her heirs and assigns,
owners of any part of the logs now owned by R.

Terri Violations

Exhibit A



Queen Shoals
Looking East on
old railway. Now
paved over by State
and used as access
road to Residences
& GAS Plants.
Road name is
River Haven Road.

old rails →

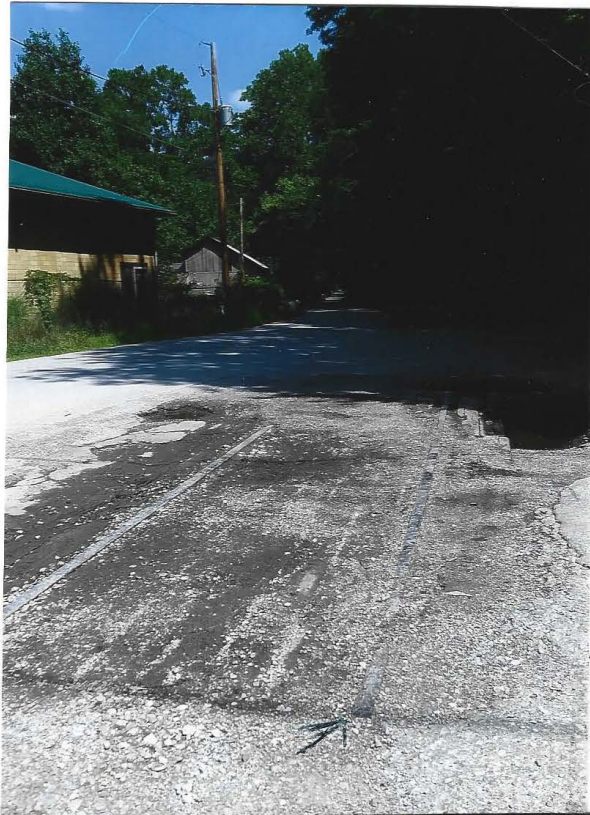


Exhibit B

Appx. Couple
hundred yards
up (east)
from above
photo,
WV State
owned Kayak
& Canoe
launch site
with only
access via
River Haven
Road.



Excerpt from A Notice by the [Transportation Department](#) and the [Surface Transportation Board](#) on 04/23/2008

In some cases railroads have taken actions affecting rail property without first seeking abandonment authority. When this occurs on inactive lines, we generally do not discover these actions until after the fact when the carrier seeks abandonment authority. Such actions are unlawful. Not only is the rail line unlawfully severed from the national transportation system when this occurs, but the Board's ability to carry out its obligations under NEPA and NHPA may then be adversely affected. The Board will continue to carry out its obligations under those statutes and will take whatever steps necessary to enforce compliance with them. Railroads that take such actions may find not only that obtaining abandonment authority is delayed, but that the Board will require historic preservation training for the railroad's staff members who are involved with abandonment projects and require the railroad to document the in-house measures that it will implement to prevent such actions from occurring in the future. Other possible actions the Board may take include restricting the railroad's future ability to employ expedited procedures to obtain abandonment authority, imposing a financial penalty, and seeking a legal remedy against the railroad in a court of law.

Violations by TERRI

1. Has allowed the State to pave over sections of old rail corridor for use as a public road at Queen Shoals. (Exhibit A)
2. Has allowed the state to construct and operate a Kayak/Canoe launch site adjacent to the RR, using the old RR bed as sole access (Exhibit B)
3. Has allowed Cornwell Gas Facility (Currently Eastern Gas Transmission and Storage) to occupy and conduct operations on the Right of Way, as well as motorized access to and from the plant over the old Railway. (Exhibits C1, C2 , C3 and C4)
4. Has granted at least one private party permission to install a gate across the ROW that prohibits any and all access to a certain section of the abandoned corridor. (Exhibit D)
5. Has a **written lease** with at least one person (Exhibit E) permitting construction of a "cut through" road on the ROW. TERRI officials were clearly aware the cut through was for the purpose of allowing motorized vehicles to access and travel over the old railway road from a state owned public lane.

6. Has implicitly allowed motor vehicle access over the road for 40 years



Exhibit C1

Queen Shoals Bridge (left)
Intersection with
Old railway (now
River Haven Rd)
State DOT Sign.
White Sign just
below is for
gas compression
plant. 2 1/2
miles down
right of way



Exhibit C2

Close-up of sign
referenced above.
Access to Station
is over the RR bed
(now road)



Exhibit C3
Overview of Gas Plant & ROW road
Pipeline installation on upper right
is part of plant. RR access road
runs through center



Exhibit C4
Close up of High Pressure
Natural gas lines shown
on upper level in previous
photo





P.O. BOX 460, 200 GREENBRIER RD., SUMMERSVILLE, WV 26651
PHONE: 304-872-3000 FAX: 304-872-3032 or 3040

July 7, 2017

Tawney Mangus
P. O. Box 34
Procious, WV 25164

Dear Ms. Mangus:

Attached you will find a Land Lease Agreement for the parcel that is outlined on the attached map. Please sign where indicated and return the signed document along with the first annual payment in the amount of \$50 in the enclosed pre-addressed envelope. We will send you a fully executed copy of the signed agreement for your files.

Let me know if you have any questions.

Sincerely,

Max G. Scott
President

MGS:alm

Enclosures

Agreement # ELKR 2017-02

LAND LEASE

THIS LEASE, made this 19th day of July 2017, between The Elk River Railroad, Inc. whose address is Box 460, 200 Greenbrier Road, Summersville, West Virginia, 26651, Lessor, and Tawney Mangus whose address is P. O. Box 34, Procious WV 25164 Lessee:

WITNESSETH: That in consideration of covenants herein specified and the rental to be paid by Lessee, Lessor does hereby lease unto Lessee certain vacant and/or unimproved land, located at Camp Creek, West Virginia, hereinafter called "the premises," as shown on the plan attached hereto and hereby made a part hereof, described as follows:

Right-of-Way near Camp Creek Bridge indicated in the attached valuation map from Railroad Valuation Station 7502+00 to Valuation Station 7506+00 consisting of 400 feet of right-of-way.

It is agreed between the parties hereto:

1. Lessee shall use and occupy the premises solely for the purpose of Entering and exiting the railroad right-of-way with vehicles. This agreement will not prohibit vehicular traffic through leased area.
2. Lessee shall pay to Lessor as rental for the premises the sum of ----- FIFTY DOLLARS----- (\$50.00) per annum payable annually in advance from the date hereof. Lessee shall reimburse Lessor, as additional rental, all real estate taxes levied against Lessee's improvements and special assessments applicable to the premises and all costs of or charges for water, sewage, electricity, heat and other utilities furnished to the premises and paid by Lessor, within one month after presentation of bills therefor. The payment by Lessee of any sum(s) in advance shall not create an irrevocable lease for the period for which the same is/are paid. Lessor reserves the right to periodically adjust the rent herein any time after the expiration of twelve (12) months, by giving notice of such adjustment to Lessee at least sixty (60) days prior to the effective date of such adjustment; periodic rent may be similarly adjusted thereafter. Upon termination of this lease as hereinafter provided, Lessee will accept a prorata refund of such rental and taxes paid in advance, in full settlement, satisfaction and discharge of the remainder of the term or period; provided, however, Lessee shall not be entitled to such refund when the cumulative amount involved is less than Fifty Dollars (\$50.00).
3. Lessor shall have at all times the right to distrain for rent due and shall have a valid and first lien upon all property of Lessee situated on the premises as security for the payment of rent herein reserved. Lessee expressly consents to the recording of a Financing Statement, at Lessee's cost, to perfect Lessor's lien hereunder.