

VIA ELECTRONIC FILING

Katherine Stephenson
PO Box 282
Procious, WV 25164

March 20, 2022

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 is in reference to Governor Jim Justice's filing of March 8, 2022, urging expedient approval of the railbanking efforts by The Elk River Railroad. His letter is disturbingly vague about the particular ROW sections involved. While there may be some basis for TERRI's claimed ROW holdings of the north and south sections of this proposed rail trail, the central section (between Clendenin and Hartland) can no longer be included. This should be evidenced by the Board's ruling that the section would no longer be in its jurisdiction, if TERRI could not show that they rebuilt the railroad, which was a condition imposed by the ICC at the time. As you know, TERRI then withdrew its application for railbanking of this section because no effort was ever made--nor will be made-- on their part to re-build the railroad. The vague wording of the governor's letter, along with questionable overtures by TERRI in the past to include this section suggests yet another effort to slip it into the package for some sort of federal funding.

Attached, as an example of this, is the Governor's March 2 announcement that purchase of land for the Elk River Trail is to be included in the Projects funded through grant money. The [Office of Abandoned Mine Lands and Reclamation \(AML\)](#) administers the grant funding, which is provided by the U.S. Office of Surface Mining Reclamation and Enforcement (OSMRE). Note that the section referenced for purchase is 28.8 miles, but described as lying between Clendenin and Queen Shoals, which is a distance of only about 5 miles. In actuality, even this 5-mile section is within the original 1979 B&O abandonment and should have reverted back to the adjacent property owners. Nevertheless, TERRI is presenting it as their property to sell to the state, utilizing federal funds. In fact, construction of the trail with vehicular restrictions is well underway between Clendenin and Queen Shoals. Next will be the remainder of the corridor. None of the property owners have been contacted by the state about their legal interests in the ROW.

While TERRI may own, outright, some small parcels of land and /or sections of ROW along the corridor, the majority of the ROW was to have reverted to adjacent property owners, heirs and successors..

I have attached 2 documents that should provide clear and convincing evidence of this.. The first is a copy of the 1991 Condemnation suit that TERRI had to file in order to re-gain the ROW from property owners for the stated purpose of building a railroad. The suit was dismissed on October 21, 1997, after TERRI did not comply with the “eminent domain” conditions. The second is a letter from TERRI’s own attorneys CONFIRMING the reversionary rights of property owners if the railroad was not built. Pertinent section is bracketed. Sorry about the poor print quality.

If the state of WV plans on purchasing the disputed ROW from TERRI rather than from the true property owners, it would be a misappropriation of federal funds. With that in mind, and to alleviate the constant fear and uncertainty that has plagued our community for more than 2 years, we respectfully request the Board issue a clear and final decision on the status of this 28.75 mile section between Hartland and Clendenin (Reamer). Thank you very much for your consideration.

Sincerely,

Katherine Stephenson

CC: ALL PARTIES OF RECORD

Enclosures:

- 1 Governor Justice announcement for Trail funding
- 2 TERRI 1991 Condemnation suit
- 2. Slover & Loftus 1992 Letter

Gov. Justice, WVDEP Sec. Ward announce over \$24.7 million in AML Economic Revitalization Program grants

3/2/2022

TOTAL RECOMMENDED FOR ALL PROJECTS: \$24,770,265

The recommended projects are as follows:

CLAY / KANAWHA COUNTIES

Elk River Rail Trail Project – \$1,500,000

To purchase 28.8 miles of privately owned rail trail – Queen Shoals (MP 67.2) to Clendenin (MP 96.0).

The WVDEP's [Office of Abandoned Mine Lands and Reclamation \(AML\)](#) administers the grant funding, which is provided by the U.S. Office of Surface Mining Reclamation and Enforcement (OSMRE).

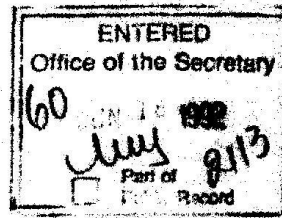
<https://governor.wv.gov/News/press-releases/2022/Pages/Governor-Justice-WVDEP-Secretary-Ward-announce-AML-Economic-Revitalization-Program>

grants.aspx?fbclid=IwAR2uj3YauWOLizYxx6QejDp9ZeRaUu9dziloBdlbHn2rwcUjNmbIRLbONTc

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JAMES M. DE SUE
KEVIN J. DOWD
ROBERT D. ROSENBERG
FRANK J. FERGOLIZZI

SLOVER & LOFTUS

ATTORNEYS AT LAW
1924 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

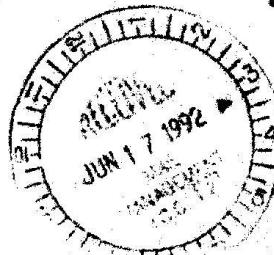


508 947-7170

June 17, 1992

BY HAND

Hon. Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
12th Street and Constitution Ave., N.W.
Washington, DC 20423



Re: Finance Docket No. 31989, The Elk River Railroad--
Construction Exemption

Dear Mr. Secretary:

This is in response to the letter from the Elk River Rail-
to-Trails Foundation, Inc. ("Foundation"), dated June 10, 1992,
concerning the subject exemption proceeding.

In its letter, the Foundation expressed concern that The Elk
River Railroad, Inc. ("TERRI") might change its mind about
reconstructing the rail line between Hartland and Falling Rock,
West Virginia, which is the subject of this exemption proceeding,
and that if it did so, it might then turn around and sell off the
right of way, piecemeal, thereby destroying an important trans-
portation corridor.

TERRI wishes to assure the Commission, and the Foundation,
that it has no intention of acquiring the right-of-way and then
selling it off, piecemeal or otherwise; TERRI's only interest in
the right-of-way is for use in reconstructing, and then operat-
ing, a rail line, as explained in its submissions in this docket.

The Commission and the Foundation should also understand
that TERRI could not acquire the corridor and then break it up
for non-rail uses, even if TERRI wanted to. TERRI's right to
acquire the right of way under state law is predicated on its
planned use of the property for railway purposes, and consistent
with that predicate, TERRI has sought only an easement in the
property -- not fee title. If TERRI abandoned its plans to
construct the line before it completed its acquisition of the
right of way, its condemnation action would be dismissed, and the
right-of-way property would remain in the hands of its current
owners. If on the other hand TERRI completed its acquisition but
then abandoned its plans to build the line, its easement would

DISTRICT	OFF.	DOCKET NO. YR. NUMBER		OR	FILING DATE MO. DAY YR.				NATURE SUPP.	DIV. PT. - DEF.	R 23	\$ DEMAND THOUSANDS	JUDGE	MAG.	COUNTY	JURY DEM.	DOCKET YR. NUMBER
0425	02	91	1174	2	11	22	91	4	210	4	5		2505		54015		91 1174

PLAINTIFFS

THE ELK RIVER RAILROAD, INC.,
a West Virginia corporation

* Added per amended complaint.

DEFENDANTS

CSX TRANSPORTATION, INC.,
a Virginia corporation, and
OTHERS UNKNOWN

* PRITT, CARL W.,
* PRITT, HAZEL M.
* BRANHAM, JOHN ELBERT
* SUMMERS, LEE
* COGAR, CHARLES W.
* WHITE, BERNARD F.
* WEHRLE, ARIE M.
* GLASGOW, JOHN W.
* HARRAH, EDWARD A.
* BOGGS, NELLIE J.
* SAMPLES WAITMAN,
* EASTERN ASSOCIATED COAL CORP, a West Virginia corporation.
* MANUFACTURERS HANOVER TRUST COMPANY, Successor

Trustee, **URSILLI, D.A., JR.** Successor Trustee
CAUSE
(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE
IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

Removal from Circuit Court of Clay County. Pltf seeks to determine lawful right to take property which is determinable pursuant to 49 USC 10901; and thereupon to take property in Clay County, West Virginia, to extend an ICC certified rail line.

ATTORNEYS

WITHDRAWN PURSUANT TO
ORDER 12-10-91.

~~F. T. Graff, Jr.~~
Bowles Rice McDavid Graff and Love
P.O. Box 1386
CHARLESTON WV 25325-1385
(304)347-1100

and

Louis S. Southworth, II
Jackson and Kelly
P.O. Box 553
Charleston, WV 25322
(304)340-1000
also: Thomas E. Potter
and Wendel B. Turner

Manufacturers Hanover Trust Co. & D.A. Ursitti
Andrew S. Zettle
Huddleston, Bolen, Beatty, Porter & Copen
P.O. Box 2185
Huntington, WV 25722-2185
(304)529-6181

Bernard F. White
B.F. White
3413 W. 4th Avenue
Belle, WV 25015

JOHN W. GLASGOW
426 Hiawatha Avenue
Hopkins, MN. 55343
612/933-4669

☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
	11-22-91	\$120.00 51516		JS-5	
				JS-6	

DATE	NR.	PROCEEDINGS	
11-22-91	1	NOTICE OF REMOVAL w/attached Circuit Court petition and return of service.	nfs/rac
11-29-91	2	ANSWER by Deft CSX Transportation.	rac
12-03-91	3	ORDER (2505): Status conference 12-18-91 @10:45. cc: counsel. (EOD 12-04-91).	nfs
12-10-91	4	ORDER SUBSTITUTING COUNSEL (2505): F. T. Graff, Jr. & the firm of Bowles, Rice, McDavid, Graff & Love is hereby granted leave to withdraw as counsel for the Pltf.; Thomas E. Potter, Wendel B. Turner & the firm of Jackson & Kelly shall hereafter be counsel of record for the Pltf. (cc: counsel) EOD: 12-11-91	ahr
12-11-91	5	NOTICE & MOTION by Deft. CSX to Consolidate 2:91-1174 with 2:91-1172.	ahr
12-11-91	6	MEMORANDUM by Deft. CSX in Support of its Motion to Consolidate.	ahr
12-13-91	7	NOTICE/MOTION by deft, CSX, to dismiss with exhibit and cer/serv.	nfs
12-13-91	8	MEMORANDUM by deft, CSX, in support of motion to dismiss.	nfs
12-13-91	9	AMENDED PETITION by pltf to acquire lands for public use by eminent domain with cert/serv.. Issued orig. summons + 32 copies, ret. 20 day, issued orig summons + 29, ret 30 days.	nfs
12-16-91	10	COST BOND re Deft (Ursilli).	rac
12-16-91	11	COST BOND re Deft (Glasgow).	rac
12-17-91	11a	MOTION by Pltf. to Remand.	rac
12-19-91	12	SECY OF STATE LEGAL NOTICE accepting service of Summons and Legal Petition for Deft Eastern Associated Coal Corp. on 12-17-91.	ahr
*12-17-91	12a	MEMORANDUM by Pltf in Support of Motion to Remand.	rac
12-20-91	13	RETURN OF SERVICE on Summons & complaint to Bernard White by personal service on 12-17-91.	rac
12-20-91	14	RETURN OF SERVICE on Summons & complaint to Nellie J. Boggs by personal service on 12/16/91.	rac
12-20-91	15	RETURN OF SERVICE on Summons & Complaint to Edward A. Harrah, copies were left with Doris Harrah on 12/16/91.	rac
12-20-91	16	RETURN OF SERVICE on Summons & Complaint to Dorcus F. Harrah by personal service on 12/16/91.	rac
12-20-91	17	RETURN OF SERVICE on Summons & Complaint to Waitman Samples by personal service on 12/16/91.	rac
12-20-91	18	RETURN OF SERVICE on Summons & Complaint to Charles W. Cogar by personal service on 12/16/91.	rac
12-20-91	19	RETURN OF SERVICE on Summons & Complaint to John Elbert Branham by personal service on 12/16/91.	rac
12-20-91	20	RETURN OF SERVICE on Summons & Complaint to Arie M. Wehrle by personal service on 12/16/91.	rac
12-21-91	21	ANSWER by deft, CSX Transportation, Inc. to petitioner's amended petition.	nfs
12-26-91	22	LETTER FORM ANSWER by Bernard F. White.	rac
01-02-92	23	NOTICE by Defts, Manufacturers Hanover Trust Co. & D.A. Ursitti, Jr., of Appearance.	rac
01-03-92	24	RETURN OF LEGAL NOTICE by SOS indicating deft, Manufactures Hanover Trust Company,, received summons & amdp/petition by cert/mail 12-23-91, certified return card attached.	nfs

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. <u>2:91-1174</u>
THE ELK RIVER RAILROAD, INC. etc		CSX TRANSPORTATION, INC., ETC, ET AL	PAGE <u>2</u> OF <u> </u> PAGES
DATE	NR.	PROCEEDINGS	
01-03-92	25	RETURN OF SERVICE indicating service of summons & complaint was served upon the deft, John W. Glasgow, through SOS by certified mail 12-21-91. (return receipt card attached) nfs	
01-08-92	26	RETURN OF SERVICE: Sec of State accepted service of the Deft's Answer on behalf of Eastern Associated Coal Corp. on 01-06-92. rap	
01-08-92	27	RETURN OF SERVICE: Sec of State accepted service of Deft's counsel's notice of appearance on behalf of Eastern Associated Coal Corp. on 01-06-92. rap	
01-13-92	28	MOTION by defts (Edward A. Harrah & Dorcus F. Harrah) to remand with cert/serv. nfs	
01-13-92	29	MEMORANDUM by defts (Edward A. Harrah & Dorcus F. Harrah) in support of motion to remand. nfs	
01-15-92	30	MOTION by defts (Carl W. Pritt & Hazel M. Pritt) to remand with cert/serv. nfs	
01-15-92	31	MEMORANDUM by defts (Carl W. Pritt & Hazel M. Pritt) in support of motion to remand. nfs	
01-17-92	32	TIME FRAME ORDER (2505): Motions to remand & briefs in support thereof due 02-14-92; responses to motion to remand 03-13-92; replies 03-20-92; Hearing 03-24-92 @10:30 on pending motions to remand. cc: counsel. (EOD 01-21-92. nfs	
01-17-92	33	ANSWER of deft, John W. Glasgow, to amended petition. nfs	
01-31-92	34	MOTION by deft, CSX Transportation, Inc., for general continuance pending a ruling by the Interstate Commerce Commission with regard to the petition filed by the pltf 01-23-92 with notice & cert/serv. nfs	
03-05-92	35	ORDER (2505): Withdrawing all pending motions in this action; and that all proceedings in this action be stayed and the Clerk is directed to remove this action from the active docket of this Court, the same to be placed in inactive status unless and until the Court or a party shall move to reopen for further action at any time prior to the date which is ninety days after a final determination by the Interstate Commerce Commission that the Petitioner either may be or may not construct a line of railroad over part or all of the properties that are the subject of this action, etc, this action shall be deemed dismissed without prejudice upon the expiration of such ninety-day period. cc: counsel. (EOD 03-09-92). nfs	
03-09-92	--	JS 6 CARD PREPARED. nfs	
11-25-96	36	NOTICE and MOTION by pltf for the Court's summary entry of an order reopening this civil action and dissolving the stay of this condemnation proceeding. skh	
12-19-96	37	NOTICE by defts of a status conference set for 2:00 on 01-22-97 at which time the parties shall report to the Court the status of their settlement negotiations and, if the issues between them are not fully resolved, have a representative present to conduct settlement negotiations. skh	

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. 2:91-1174
THE ELK RIVER RAILROAD, INC.		CSX TRANSPORTATION, INC., et al.	PAGE 3 OF 3 PAGES
DATE	NR.	PROCEEDINGS	
06-03-97	38	ORDER(2505): withdrawing [36] motion for the Court's summary entry of an order reopening this civil action and dissolving the stay of this condemnation proceeding; directing that this proceeding remain in inactive status unless a party's motion to reopen is granted, and, if no motion is filed within 60 days, this proceeding shall be deemed to be dismissed without prejudice; reset Status Conference for 10:30 on 07-29-97. cc: attys (EOD 06-04-97) skh	
08-13-97	39	ORDER, AND STIPULATION TO ENTRY OF ORDER, EXTENDING THE PERIOD OF TIME WITHIN WHICH TO FILE A MOTION TO REOPEN CONDEMNATION PROCEEDING(2505): the period of time within which a party is required to move to reopen this condemnation proceeding as set forth in the Court's order entered 06-03-97 and is extended from the date of 08-01-97 for a period of 90 days and, if no motion to reopen this condemnation proceeding is made by a party within that period of time, then this condemnation proceeding shall be deemed to be dismissed without prejudice; a status conference will be held at 10:30 on 10-21-97 either telephonically or in person as the parties may agree; directing that this order be entered nunc pro tunc to the date of 08-01-97. cc: attys (EOD 08-13-97) ENTERED NUNC PRO TUNC as of 08-01-97 skh	