

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 857 (Sub-No. 2)]

Colorado Landowners—Adverse Abandonment—Great Western Railway of Colorado, LLC in Weld County, Colo.

On October 5, 2022, a group of landowners (Landowners)¹ filed an application² under 49 U.S.C. § 10903 requesting that the Surface Transportation Board (Board) authorize the third-party, or adverse, abandonment of 6.2 miles of rail line extending from milepost 0.0 at Johnstown, Colo., to milepost 6.2 near Welty, Colo. (the Line), owned by Great Western Railway of Colorado, LLC (Great Western). The Line traverses U.S. Postal Service Zip Codes 80534 and 80513.

According to the Landowners, the Line was constructed in 1902 and 1903 to transport sugar beets from a sugar beet dump facility, which closed in the 1970s. In 2008, Great Western filed a verified notice of exemption to abandon the Line. See Great W. Ry. of Colo., LLC—Aban. Exemption—in Weld Cnty., Colo., Docket No. AB 857 (Sub-No. 1X). After notice of the exemption was served and published in the Federal Register, the Board issued a notice of interim trail use or abandonment

¹ The 27 landowners are listed in Appendix 1 to the application.

² The application is considered filed 20 days after the Landowners filed a September 15, 2022 amendment to a September 13, 2022 revised environmental and historic report. See Colo. Landowners—Adverse Aban.—Great W. Ry. of Colo., LLC, in Weld Cnty., Colo., AB 857 (Sub-No. 2), slip op. at 1 (STB served Sept. 7, 2022).

authorizing negotiations for interim trail use/rail banking of the Line under the Board's regulations at 49 C.F.R. § 1152.29 and granted six one-year extensions of the deadline to exercise abandonment authority. However, in 2014, Great Western filed a letter stating that it had decided to reopen the Line and would not be consummating the abandonment.

According to the Landowners, the Line has not been used for Board-regulated rail transportation for approximately 43 years and there is no reasonable prospect for such use in the foreseeable future. The Landowners state that no shippers have used the Line since 1979, and that the Line has been used only for random and sporadic rail car storage between 2008 and 2016. The Landowners further claim that Great Western has performed no maintenance on the railroad right-of-way, such that use of the Line for rail transportation is impossible and/or cost prohibitive. The Landowners state that they are seeking the adverse abandonment to pave the way for action under Colorado law to free the land from Great Western's easement.

In a decision served on February 11, 2022, the Landowners were granted exemptions from several statutory provisions and waivers of certain Board regulations that were unnecessary to the adverse abandonment application or that sought information not available to the Landowners.

The Landowners state that, to their knowledge, the Line does not contain any federally granted rights-of-way. Any documentation in the Landowners' possession will be made available promptly to those requesting it. The Landowners' entire case-in-chief for adverse abandonment was filed with the application.

The Landowners state that the interests of railroad employees will be protected by the conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen

Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C.
91 (1979).

Any interested person may file written comments concerning the proposed adverse abandonment or protests (including protestant's entire opposition case) by November 21, 2022. Persons who may oppose the proposed adverse abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 C.F.R. § 1152.25. The Landowners' reply is due by December 5, 2022.

Any request for an interim trail use/rail banking condition under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 must be filed by November 21, 2022,³ and should address whether the issuance of a certificate of interim trail use in this case would be consistent with the grant of an adverse abandonment application.

All filings in response to this notice must refer to Docket No. AB 857 (Sub-No. 2) and must be filed with the Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading filed with the Board must be served on the Landowners' representatives: Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422-1336; and Thomas S. Stewart, Stewart, Wald & McCulley, 2100 Central Street, Suite 22, Kansas City, MO 64108.

³ Filing fees for trail use requests can be found at 49 C.F.R. § 1002.2(f)(27).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Office of Environmental Analysis (OEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation.⁴ A copy of the EA (or EIS) will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245-0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

Persons seeking further information concerning abandonment procedures may contact the Board's Rail Customer and Public Assistance program at (202) 245-0238 or refer to the text of the abandonment regulations at 49 C.F.R. part 1152.

Board decisions and notices are available at www.stb.gov.

Decided: October 20, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

⁴ On October 14, 2022, Great Western filed a reply challenging, among other things, the sufficiency of Landowners' environmental and historic reports submitted to date and the Landowners' compliance with certain service and publication requirements. To the extent that these objections need to be addressed, the Board will do so in a future decision in this docket.