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Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1330X

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THE STATE OF OKLAHOMA BY AND THROUGH THE
OKLAHOMA DEPARTMENT OF TRANSPORTATION
- ABANDONMENT EXEMPTION –
IN PAYNE COUNTY, OKLAHOMA

REPLY OF OKLAHOMA DEPARTMENT OF TRANSPORTATION
AS DIRECTED BY THE BOARD'S JULY 15 DECISION

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

*Counsel for Oklahoma Department of
Transportation*

Dated: July 18, 2024

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SURFACE TRANSPORTATION BOARD

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**THE STATE OF OKLAHOMA BY AND THROUGH THE
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The State of Oklahoma by and through the Oklahoma Department of Transportation (“ODOT”) files this reply as directed by the Board’s July 15 Decision in this proceeding. ODOT respectfully requests that the Board accept this response and proceed with issuing a decision to determine whether it should grant the City of Stillwater’s petition for trail use.

BACKGROUND

On May 30, 2024, ODOT filed a Joint Notice of Exemption to abandon a line of railroad extending between milepost 30.74 to milepost 27.54 in Stillwater, Payne County, Oklahoma (the “Subject Line”). In its notice, ODOT complied with all of the Board’s requirements for a class exemption under 49 C.F.R. §1152.50 regarding exemptions for out of service rail lines including a statement that the Subject Line may be suitable for trail use and stating the City of Stillwater’s interest in the line for interim trail use. In addition, ODOT’s notice of exemption satisfied the Board’s public notice requirement of 49 C.F.R. §1105.12 by publishing a notice of the proposed abandonment in the *Stillwater News Press* on March 7, 2024.

On June 27, 2024, the City of Stillwater submitted a petition for trail use and on that same day, ODOT replied stating its willingness to negotiate a trail use agreement with the City of Stillwater.

On June 28, 2024, the National Association of Reversionary Property Owners (“NARPO”) filed a letter demanding that the Board require more information from ODOT than provided in the ODOT notice. In its demand letter, NARPO quotes 49 CFR §1152.22(e)(4) that requires an applicant to make a “[s]tatement of whether the properties proposed to be abandoned are appropriate for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation.” NARPO emphasized the following sentence of the regulation, “[i]f the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.”

NARPO purportedly provides this provision highlighting the second sentence to assert – without support or verification - that ODOT knowingly omitted a statement related to its awareness of potential reversionary interests. As part of its argument, NARPO’s filing additionally asserts – again without support or verification – that “numerous properties abutting the right of way of this rail line in AB 1330X, and most of the abutting property owners have reversionary rights to the underlying fee title to the right of way.” In addition, NARPO makes other unsupported assertions to include, the “State acquired this rail line from [BNSF Railway, Inc. (“BNSF”)] in the 1980s and the State should have gotten all Valuation Maps associated with this rail line.”

NARPO also draws state law legal conclusions to include, the “the Valuation maps would clearly show that many of the parcels acquired in 1901 by BNSF’s predecessor were acquired by

easement which according to Oklahoma law makes them reversionary on abandonment of rail purposes.” And finally, NARPO includes its gratuitous legal and policy opinion (which the Board partially incorporates into its July 15 Decision (slip op. 1 at fn. 2)) that “the State should also provide good governance to its citizens by notifying the abutting property owners that their rights will ripen once the rail line is abandoned or considered for a trail.”

At the time of ODOT’s filing, ODOT was unaware of any potential reversionary interests and therefore no disclosure was or is required. As such, ODOT satisfied its regulatory obligations under the class exemption procedures. Despite ODOT having fulfilled its obligations for a class exemption abandonment, ODOT provides the following supplemental §1152.22(e)(4) “disclosure” in response to the Board’s July 15 decision.

Disclosure under 49 C.F.R. §1152.22(e)(4)

On July 16, 2024, an ODOT staff member traveled to an offsite ODOT warehouse where records are stored and reviewed available hard copy documents related to ODOT’s acquisition from BNSF (in 1998 – not the 1980’s as alleged). The staffer spent over six hours searching through ODOT records looking for information related to the BNSF/ODOT transaction. Through this search, the staffer, with the assistance of a second state employee, was able to review the Donation Agreement and Quitclaim Deed between the State of Oklahoma and BNSF. Neither the Quitclaim Deed nor the donation agreement make any specific reference to reversionary interests.

Under that Quitclaim Deed, BNSF granted the State of Oklahoma BNSF’s “right, title, interest, claim and demand, if any, which [BNSF] has in and to its rail corridor of land located in the Counties of Pawnee and Payne, State of Oklahoma, between Milepost 8.46, just south of Pawnee Junction, Oklahoma, and the southern end of this rail corridor at Milepost 30.74...”

According to the Quitclaim Deed, it is subject to “all existing interests in the Premises, and to all reservations, easements and other encumbrances of record.” The Quitclaim Deed does not identify specific reversionary rights, nor does it provide that no such rights exist.

The ODOT staffer was also able to locate a hard copy of a 2010 “Petition to Quiet Title to Abandoned Railroad Right-of-Way” referencing the District Court of Payne County, Oklahoma, but without a docket number or time stamp indicating it was filed. No other court documents were found to indicate the disposition of this petition if it were in fact pursued. The existence of this petition appears to suggest that two landowners may have believed they had reversionary rights as related to a segment of rail line that ODOT acquired from BNSF.

None of the information located at the ODOT warehouse verifies the existence of reversionary interests or disproves that any reversionary interests exist as related to the Subject Line. Accordingly, ODOT stands by its disclosure that it is not aware of any specific restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, but acknowledges that some or all of the property could be subject to reversionary interests. Moreover, even if there are reversionary interests, they would not prevent the transfer of the Subject Line for public use interim trails use under the National Trails Act and the Board’s regulations as has been proposed by the City of Stillwater.

LEGAL STANDARD

1. Preliminary Question of Standing

Initially, ODOT questions whether NARPO has any standing to complain about the notice of exemption. It does not purport to be an affected adjacent landowner or to be filing on behalf of any allegedly affected or identified adjacent landowners. In addition, NARPO is not

complaining about the Board's interpretation of an issue (such as the Board's interpretation of the Trails Act) whereby a decision by the Board in this case could affect its members.¹

Therefore, NARPO has no basis to demand answers from ODOT or any other applicant in an abandonment where it or its members are not directly impacted or potentially impacted by a decision from the Board.

2. Class Exemption Standards for Abandonments

An applicant's omission of a disclosure under 49 CFR § 1152.22(e)(4) is not material as such to warrant *voiding ab initio* an exemption filed under the Board's class exemption regulations. Under 49 CFR § 1152.22(e)(4), "if the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed." Under 49 C.F.R. §1152.50(d)(3), if a notice of exemption "contains false or misleading information, the use of the exemption is *void ab initio*, and the Board shall summarily reject the exemption notice."

ODOT denies that it made a false or misleading disclosure. However, even if it did, for an omission or misstatement to render a verified notice void, the information provided must be material to the transaction.² According to the Board, "an omission would be material to the transaction only if the information affects the eligibility of the line for the class exemption."³ An omission related to 49 C.F.R. §1152.22(e)(4) is not deemed to be material.⁴

¹ See for ex., *Union Pacific R.R. Co. – Abandonment – in Morgan County, CO (Julesburg Subdivision)* Docket No. AB-33 (Sub-No. 86), slip op. at 3, n. 5 (served Jan. 30, 1997).

² *Central Kansas Railway, Limited Liability Company – Abandonment Exemption – In Marion and McPherson Counties, KS*, slip op. at 4 (Dec. 2, 1999).

³ *Id.*

⁴ *Id.*

3. State Law Governs the Interpretation of Deeds and the Disposition of Reversionary Interests and Trail Use issues are Governed by National Trails System Act and the Tucker Act

The Board has repeatedly stated that state property law including the interpretation of deeds and the disposition of reversionary interests as related to abandonments is outside of its jurisdiction and are a matter for courts to decide.⁵ In addition, any issues related to potential compensation to landowners as a result of the Subject Line becoming a trail are governed by the National Trails System Act, 16 U.S.C. 1247(d) and the Tucker Act, 28 U.S.C. 1491 and are to be decided by the United States Court of Claims.

ARGUMENT

It is not clear what the NARPO letter sought to accomplish considering that NARPO filed its letter the day after the City of Stillwater filed its Petition for Trail Use and ODOT filed a reply agreeing to negotiate a trail agreement. The NARPO letter is replete with unsupported assertions and legal conclusions, and does not indicate any direct interest in the proceeding. Under the 49 CFR §1152.22(e)(4), the applicant is to disclose - *if it is aware of* – any restriction on the title to the property including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes. At the time ODOT filed the notice of exemption, ODOT had no “awareness” of potential restriction on title and therefore the ODOT notice satisfied the Board’s regulations for class exemption abandonments.

Despite having no regulatory obligation to do so, in response to the Board’s July 15 decision, an ODOT staffer invested over six hours of time with the assistance of another state

⁵ *Id.*, slip op. at 7; *See also, Ingredion Inc. – Petition for Declaratory Order*, STB Finance Docket No. 36014, slip op. at 3 (served Sept. 30, 2016); *Grafton and Upton R.R. Company – Petition for Declaratory Order*, STB Finance Docket No. 36518, slip op. at 3 (served Nov. 3, 2021).

employee to become “aware” of any restriction on title in the event that a disclosure would then be required. This amount of effort is not required in section 1152.22(e)(4). Nevertheless, ODOT offered above a detailed restatement of its disclosure indicating that although its subsequent review did not confirm the existence of any reversionary rights, such reversionary rights *may* exist.

Even if ODOT willfully ignored this regulation – which it did not – the omission is not material to the abandonment and does not render the notice *void ab initio*.⁶

In order to fully determine the reversionary rights of potential landowners along this Subject Line would potentially require a state court to determine the scope of those rights. As the Board has long held matters of property law – to include reversionary rights – are for the courts to decide. Therefore, this proceeding is not the appropriate forum to determine if there are in fact any reversionary rights.

ODOT’s Notice of Exemption included a statement that the City of Stillwater is interested in the Subject Line for trail use. The day before the NARPO letter, the City of Stillwater filed a petition for trail use. That same day, ODOT submitted a letter to the Board stating its willingness to negotiate a trail use agreement. Yet, the very next day, NARPO filed a letter demanding action by the Board based on NARPO’s unsupported allegation that ODOT had knowledge that would have required additional disclosure. Considering that any potential trail use would be governed by the Trails Act and any takings claims that may result are governed by the Tucker Act permitting reversionary owners a right to seek compensation at the U.S. Federal

⁶ See *Central Kansas Railway, Limited Liability Company – Abandonment Exemption – In Marion and McPherson Counties, KS*, slip op. at 4 (Dec. 2, 1999).

Court of Claims, it is unclear what the objective or purpose of the NARPO letter is except to delay this proceeding.

Finally, NARPO includes in its letters its opinion on what it views would be “good governance” related to ODOT’s ownership of a rail line and notice that should be given to individual landowners. No railroad, government entity or private, is required under the regulations to inform potential claimants of their reversionary rights following an abandonment or a grant of trail use. ODOT gave the required notice to the public when it published notice of its intent to abandon the Subject Line in an appropriate newspaper. ODOT has executed its obligations as related to the abandonment of this rail line in accordance with the regulations.

Considering that ODOT has now responded to the NARPO letter, as ordered by the Board’s July 15 Decision, ODOT respectfully requests that the Board immediately issue a decision to determine whether it should grant a notice of interim trail use to the City of Stillwater.

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CONCLUSION

For the reasons stated above, ODOT respectfully requests that the Board issue a decision on the City of Stillwater's petition for trail use.

Respectfully submitted,



Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

*Counsel for Oklahoma Department of
Transportation*

Dated: July 18, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email
or U.S. first class mail, postage pre-paid on the following parties of record:

Kimberly Carnley
City of Stillwater
723 S. Lewis St.
PO Box 1449
Stillwater, OK 74076
Kimberly.carnley@stillwaterok.gov

Richard Welsh
National Association of Reversionary Property Owners
50-505 Grand Traverse
La Quinta, CA 92253
Dick156@earthlink.net

Robert A. Wimbish
Counsel to Stillwater Central Railroad, L.L.C.
29 N. Wacker Drive
Suite 800
Chicago, IL 60606
rwimbish@fletcher-sippel.com



Justin J. Marks

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