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Office of Proceedings
August 27, 2024
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Public Record

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

Re: Docket No. AB 857 (Sub-No. 2X), Colorado Landowners -- Adverse
Abandonment – Great Western Railway of Colorado, L.L.C. in Weld County,
Colorado

Renewed Motion To Reject and Reply

Dear Ms. Brown:

On June 4, 2024, the Landowners filed electronically a request for leave to file out of time an attached letter from the Mayor of the Town of Johnstown, Colorado. On June 19, 2024, Great Western Railway of Colorado, L.L.C. ("GWRC") filed a Motion To Reject the Landowners' filing. By decision served August 15, 2014, the Board waived its service requirements as to the manner of service on GWRC with respect to the June 4th letter and granted GWRC an opportunity to respond to the June 4th letter.

GWRC's Motion was based on two grounds: the Landowners' failure to serve electronically a copy of the letter on GWRC and the Landowners' failure to serve any other party of record, either electronically or otherwise. The Board totally ignored the Landowners' failure to serve any party of record in this proceeding other than GWRC. The Board's website identifies five parties of record for this proceeding. The Landowners' letter expressly states that the only party of record served was GWRC. Pursuant to the Board's rules, *all* parties of record must be served. 49 C.F.R.1104.12. Accordingly, GWRC hereby renews its Motion To Reject the June 4th letter.

As GWRC has pointed out on a number of occasions, the Landowners are chronic violators of the Board's rules. About two years ago, the Landowners submitted for filing their adverse abandonment application. That application was never served on counsel for GWRC and, therefore, the application should have been summarily rejected.

In his letter, the Mayor of Johnstown essentially raises four matters. First, the newly elected Mayor complains that the Town weekly receives complaints about a GWRC grade crossing. Presumably, the crossing the Mayor is referring to is the one where

GWRC's rail line crosses Highway 60. GWRC has received some requests to upgrade that crossing. In response, GWRC has made some repairs to that crossing but more work is needed. The Colorado Department of Transportation ("CDOT") had plans to fully replace the crossing in 2024. CDOT, however, recently cancelled those plans because of the pending litigation over the Welty Branch. GWRC will work with CDOT and the Town of Johnstown promptly after the conclusion of these proceedings to repair or replace the Highway 60 crossing as necessary.

Second, the Mayor states that he has been informed that GWRC previously claimed to be in negotiations with two potential shippers but that he has not seen any evidence of prospective shippers. The two potential customers GWRC was negotiating with needed more land adjacent to the Welty Branch than GWRC had available and the price of the needed land was deemed unreasonable. GWRC is still interested in expanding its site adjacent to the Welty Branch and has been in discussions with an adjacent landowner for a long term lease or purchase of additional land. In the meantime, GWRC is storing empty rail cars on the Welty Branch in order to recoup at least some of the costs of maintaining the Branch.

Third, the Mayor claims that GWRC has "wholly failed to maintain" the Welty Branch. The Mayor has been in office for about four months and he cannot possibly have inspected the Branch during that time. In the past two years, GWRC has spent approximately \$1.5 million to upgrade and maintain the Welty Branch, a 6.2-mile rail line. After the upgrades were completed, a weather-related washout occurred which was promptly repaired, demonstrating GWRC's commitment to ongoing maintenance of the line. Moreover, a portion of the costs of upgrading the Welty Branch were to repair damages to the line caused by certain adjacent landowners. Certain landowners proceeded to damage the rail line and then came to the Board to complain about the condition of the line.

Fourth, the Mayor claims that the Town asked GWRC to consider "land banking" the rail line so that the community could establish a bike and pedestrian trail. The Mayor contends that GWRC declined that request without justification. GWRC declined the request because it could not lawfully "rail bank" the line outside of the abandonment process and the Landowners are arguing that rail banking is not allowed in an adverse abandonment proceeding. In other words, the Town asked GWRC to perform an unlawful act which GWRC rightfully declined to do.

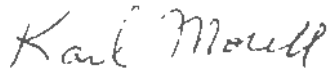
Finally, the Board should deny the adverse abandonment application because since January 1, 1996, the Board no longer has authority to grant abandonments filed by third parties. As amended effective January 1, 1996, 49 U.S.C. 10903(a)(1), provides that: "A rail carrier providing transportation subject to the jurisdiction of the Board under this part who intends to –

- (A) Abandon any part of its railroad lines; or
- (B) Discontinue the operation of all rail transportation over any part of its railroad lines;

must file an application relating thereto with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter."

There are no corresponding provisions in Chapter 109 governing abandonment applications filed by third parties. Thus, only the railroad that owns the tracks may file to abandon all or portions of those tracks. *See City of South Bend v. STB*, 566 F.3d 1166 (D.C. Cir. 2009). The Landowners in this proceeding are not rail carriers and do not have any ownership interests in the Welty Branch. Consequently, the Landowners have no standing to pursue the abandonment of the Welty Branch and the Board does not have jurisdiction over this adverse abandonment. The Board may not waive, exempt or otherwise ignore its lack of jurisdiction over this proceeding. Therefore, the Board must dismiss this proceeding.

Sincerely,

A handwritten signature in dark ink, appearing to read "Karl Morell". The signature is fluid and cursive, with the first name "Karl" and last name "Morell" clearly distinguishable.

Karl Morell

Attorney for:

Great Western Railway of Colorado, LLC

cc: All parties of record via electronic mail.