

SERVICE DATE – APRIL 8, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 777

JOINT PETITION FOR RULEMAKING TO CONSIDER AMENDMENTS TO  
REGULATIONS GOVERNING INTERIM USE OF RIGHTS-OF-WAY AS TRAILS  
(49 C.F.R. PART 1152)

Digest:<sup>1</sup> This decision defers Board action on a petition to consider potential amendments to the Board's regulations implementing section 208 of the National Trails System Act Amendments of 1983.

Decided: April 8, 2025

In a joint petition for rulemaking filed on December 20, 2024, the U.S. Department of the Interior and the U.S. Department of Justice's Environment and Natural Resources Division (collectively, Petitioners) petitioned the Board to open a rulemaking proceeding to consider potential amendments to the Board's regulations implementing section 208 of the National Trails System Act Amendments of 1983. (Pet. for Rulemaking 1.)

Railbanking is a mechanism under which established railroad rights-of-way can be preserved for future reactivation of rail service through interim trail use, subject to restoration and reconstruction for railroad purposes. 16 U.S.C. § 1247(d). Under the Board's implementing regulations, rail lines that the Board has authorized for abandonment, but for which such authority has not yet been consummated, can be preserved for future rail use through interim conversion to trails. See 49 C.F.R. § 1152.29; see also Nat'l Ass'n of Reversionary Prop. Owners v. STB, 158 F.3d 135, 138-39 (D.C. Cir. 1998). Petitioners' proposed amendments would allow parties to obtain railbanking authority via the Board's rail line discontinuance procedures<sup>2</sup> and make other modifications to the regulations. (Pet. for Rulemaking 2, 13-17, 27-30.)

In response to the petition, the Board received comments from the Association of American Railroads (AAR), the American Short Line and Regional Railroad Association

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> Discontinuance allows a railroad to cease common carrier service on a line. Unlike abandoned lines, lines where there has only been discontinuance remain subject to the Board's jurisdiction and part of the interstate rail network. See 49 C.F.R. §§ 1152.50, 1152.60.

(ASLRRA),<sup>3</sup> the National Association of Reversionary Property Owners (NARPO), the Lassen Land and Trail Trust (Lassen), the Rails to Trails Conservancy (RTC), Meghan S. Largent<sup>4</sup> (Largent), and Kotis Holdings LLC (Kotis) (collectively, Stakeholders). RTC and Lassen filed replies in support of the petition. They argue that the proposed amendments would encourage railbanking, (RTC Reply 2; Lassen Reply 11-15), and protect the interests of the public, (RTC Reply 4). AAR, ASLRRA, NARPO, Largent, and Kotis filed opposing comments, arguing that the proposed amendments would, among other things, be inconsistent with precedent and increase costs associated with railbanking. (Joint AAR/ASLRRA Reply 1-3, 9, 13-14; NARPO Reply 2, 38-39, 54; Largent Reply 3, 6; Kotis Reply 3.)

On March 11, 2025, Petitioners petitioned the Board for leave to file a reply to Stakeholders' comments and to extend or waive the 120-day deadline for the Board to grant or deny the petition for rulemaking. (Pet. 1, Mar. 11, 2025.) Prior to filing the reply, Petitioners seek leave to file a response in order to address specific Stakeholder comments and "allow new leadership at the Department of the Interior and the Department of Justice the opportunity to familiarize themselves with the relevant issues and, if necessary . . . apprise the Board whether any adjustment in the petition is warranted in light of the policies of the new Administration." (Pet. 1-2, Mar. 11, 2025.) They also ask the Board to extend or temporarily waive the 120-day deadline established by 49 C.F.R. § 1110.2(d) for the Board to grant or deny the rulemaking petition. Petitioners make clear that while they are requesting an opportunity to make a further filing, they have not "made a determination at this juncture that a further filing is necessary and appropriate." (*Id.* at 2 n.1.) They state that they would file any response within 60 days of a Board decision granting their request. (*Id.* at 1.)

To give the new Administration an opportunity to evaluate the petition for rulemaking per Petitioners' request and to respond to Stakeholder comments, the Board will waive 49 C.F.R. § 1110.2(d) and defer ruling on the petition until further order of the Board. Petitioners will be permitted to file a further submission by June 9, 2025. The Board will address the need for any further public comment at a later date.

It is ordered:

1. Section 1110.2(d) of Title 49 of the Code of Federal Regulations is waived, and a decision on the petition to institute a rulemaking is deferred until further order of the Board.
2. Petitioners may file a further submission by June 9, 2025.
3. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.

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<sup>3</sup> AAR and ASLRRA filed joint comments.

<sup>4</sup> Ms. Largent states that she is an attorney writing on behalf of landowners who could be impacted by the proposed rule changes.