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July 7, 2025

VIA E-FILING

309743

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
July 7, 2025
Part of
Public Record

Re: Ohi-Rail Corporation – Discontinuance of Service Exemption – In Perry and
Muskingum Counties, Ohio, AB 1321X; Conrail Abandonment of Lines in Zanesville,
Ohio, AB 167 (Sub-No. 445N)

Dear Ms. Brown:

The Ohio Rail Development Commission, as the successor to the Ohio Rail Transportation Authority, hereby submits its reply to Newark, Heath, & Buckeye Lake Scenic Railway's Petition to Reopen and Vacate ("Petition") and a Motion for a Preliminary Injunction ("Motion")¹ in the respective captioned matters, filed on June 16, 2025. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7831 or by e-mail: czorbaugh@mullinslawgroup.net. If I am unavailable, you may contact Spencer M. Naake, who can be reached at (202) 663-7829 or by e-mail at snaake@mullinslawgroup.net.

Sincerely,

/s/ Crystal M. Zorbaugh

Crystal M. Zorbaugh
Special Counsel for the Ohio Rail Development
Commission

Enclosures

cc: Alan Klodell, Matt Dietrich
Parties of Record

¹ Counsel for Newark, Heath, & Buckeye Lake Scenic Railway has indicated it does not believe that ORDC has an automatic right to reply to the Petition or Motion. ORDC, as the owner of the Line, helped facilitate the discontinuance filed for Ohio-Rail Corporation and holds the residual common carrier, and on both bases, ORDC contends that it has standing to file both replies. Nevertheless, ORDC has, out of an abundance of caution, submitted a third filing seeking leave to reply to both the Petition and the Motion.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1321X

**OHI-RAIL CORPORATION – DISCONTINUANCE – IN PERRY AND MUSKINGUM
COUNTIES, OH**

AB 167 (Sub-No. 445N)

CONRAIL ABANDONMENT OF LINES IN ZANESVILLE, OH

**OHIO RAIL DEVELOPMENT COMMISSION'S REPLY TO
NEWARK, HEALTH, & BUCKEYE LAKE SCENIC RAILWAY'S
PETITION TO REOPEN AND TO VACATE DISCONTINUANCE**

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July 7, 2025

INTRODUCTION

On June 16, 2025, Newark, Heath, & Buckeye Lake Scenic Railway, doing business as the “Zanesville and Western Railroad Company”(“Z&W” or “Petitioner”), filed a Petition to Reopen and Vacate a decision by the Director of the Office of Proceedings (“Director”)¹ in AB-1321X.^{2, 3} Despite not directly asking for such authority, in essence,⁴ Z&W seeks to reopen and vacate two conclusive decisions by the Board/ Director,⁵ which collectively allowed Ohio Rail Development Commission (“ORDC”), as the successor to the Ohio Rail Transportation Authority (“ORTA”), to in partnership with Muskingum Valley Park District (“MVPD”) on April 4, 2025 railbank a rail line previously

¹ While Z&W refers repeatedly to the Board committing a material error justifying reopening, ORDC presumes Z&W is referring to the Director's decision, as there was no decision in AB 1321X by the Board. Under 49 C.F.R. § 1011.7(a)(2)(x)(D), the Board has delegated to the Director the authority to determine whether to issue notices of exemption from 49 U.S.C. § 10903 pursuant to 49 U.S.C. § 10502 and the implementing regulations at 49 C.F.R. § 1152.50. Under 49 C.F.R. § 1011.2(a)(7), the Board considers appeals of initial decisions issued by the Director under the authority delegated by 49 C.F.R. § 1011.7. In doing so, the Board considers whether the Director made the correct decision, given the circumstances presented (the new evidence, changed circumstances, or material error presented as grounds for reopening). See CSX Transp. Inc.—Aban. Exemption—in Pinellas Cnty., Fla., AB 55 (Sub-No. 794X), slip op. at 3 (STB served June 22, 2020). See also Union Pac. R.R.—Aban. & Discontinuance of Serv. Exemption—in Cerro Gordo Cty., Iowa, AB 33 (Sub-No. 327X), slip op. at 3 (STB served Jan. 26, 2018).

² See Newark, Heath, & Buckeye Lake Scenic Railway’s Petition to Reopen and Vacate, filed on June 16, 2025 (“Z&W Petition”).

³ While Z&W’s cover letter included both the AB-1321X and AB 167 (445N) dockets, the petition to reopen focuses solely on AB-1321X, even though the AB-1321X docket merely seeks to carry out actions and procedures authorized in AB-167 (Sub-No. 445N) as confirmed in a subsequent Board decision. See Ohio Rail Development Commission — Petition for Declaratory Order, FD 36387(STB served Dec. 22, 2020) (“ORDC Dec Order”). Despite the Board posting the filing in both dockets and both dockets being included on the cover letter, it is unclear as to whether Z&W only seeks to reopen the discontinuance authorized in AB-1321X, or it and AB-167 (445N). This reply explains why regardless the Z&W Petition must fail.

⁴ Given the interrelated nature of the proceedings and the assertions made by Z&W, it is likely not possible for the Board to reopen the discontinuance without also reopening the abandonment from which it stems.

⁵ See Conrail Abandonment of Lines in Zanesville, Ohio, AB 167 (Sub-No. 445N) (STB served March 13, 2023) (“Abandonment NITU Decision”); Ohi-Rail Corporation – Discontinuance of Service Exemption – In Perry and Muskingum Counties, Ohio, AB 1321X (STB served Feb. 1, 2023) (“Discontinuance Decision”).

authorized as a Northeast Rail Services Act of 1981 (“NERSA”) abandonment^{6, 7, 8} The approximately 14.8 miles of rail line owned by the ORDC for decades,⁹ includes the Fultonham Running Track from milepost 0.0 to milepost 3.1 and the Z&W Industrial Track from milepost 45.8 to milepost 57.5, in Perry and Muskingum Counties, Ohio (collectively, the “Line” or “Glass Rock Branch”). Precedent is clear that NERSA established separate procedures for abandonments filed in connection with Conrail and the consolidation of the rail industry that occurred in the late 1970s/early 1980s.¹⁰ The AB-1321X abandonment was one such abandonment.

Over two years ago,¹¹ Ohi-Rail Corporation (“Ohi-Rail”), in partnership with ORDC, sought and was granted discontinuance authority to allow unused track to be railbanked pursuant to the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and the Board’s regulations. For going on 18 years, Z&W has been present on the Line, yet has failed to raise any concerns to or participate in any proceedings before the Board until now.¹² Now, Z&W has come forward asserting that “the Board should (1) reopen [AB 1321X] due to a material error of law in determining that environmental laws had either been satisfied or did not apply; and (2) vacate the discontinuance until the requisite environmental inquiry is complete.”¹³ Z&W argues that there was no legal rationale supporting the

⁶ The Line was part of the 40.8 miles of rail line in Zanesville, Ohio, that Conrail was authorized to abandon on March 12, 1982 by the Interstate Commerce Commission (“ICC”), pursuant to section 308 of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981 (“NERSA”), 45 U.S.C. 748. See Abandonment NITU Decision at 1. Congress implementing certain regulations and policies in NERSA to try to save a failing freight rail system.

⁷ See Filing ID 309429 – Notice Confirming Trails Use Agreement Being Reached (Filed April 4, 2025).

⁸ The parties followed the process set forth by the Board in the ORDC Dec Order, which provides a history of the events leading up to the railbanking of the Line.

⁹ As the Board is aware, subsequent to the ICC’s March 12, 1982, Decision authorizing the abandonment, on July 30, 1982, ORTA purchased 31.4 miles of the line, including the Glass Rock Branch.

¹⁰ See Abandonment NITU Decision at n. 2; citing Conrail Aband. Under NERSA, 365 I.C.C. 472, 472 (1981).

¹¹ Z&W has known for years that ORDC wanted to utilize the assets that comprise the Glass Rock Branch for the public interest, either for freight rail service if demonstrated to be economically feasible, or as a trail contingent on reactivation of freight rail service if and when freight rail service proved necessary in the future. Communications concerning these plans have been ongoing for years, as demonstrated in the Verified Statement from Matthew Dietrich, Executive Director of ORDC (“Dietrich VS”), specifically Attachment 1.

¹² See Dietrich VS, at 1 (describing interactions with Z&W regarding the line since 2007).

¹³ See Z&W Petition, at 4.

Board/ Director foregoing environmental review in connection with discontinuance of a line that has not provided freight service in approximately three decades, and because an environmental review was not done, the Board/ Director committed a material error in granting the discontinuance, which warrants reopening the discontinuance.¹⁴

In making such unsupported claims for relief, Z&W ignores the ICC's decisions (and directives) in (1) AB-167 (445N) and the Conrail Aband. Under NERSA and (2) the Board/ Director's decision in ORDC Dec Order, including FN 14 in the ORDC Dec Order which states: **this Line has already been authorized for abandonment**, if Ohi-Rail is authorized to discontinue service on the Line, request for Interim trail use/rail banking may therefore be filed in the Conrail Abandonment docket; the Board would not entertain requests for interim trail use/rail banking in the discontinuance docket.¹⁵ Pursuant to the Board's directive, ORDC sought discontinuance authority from the Board in a new proceeding,¹⁶ and the related railbanking/ trail use requests were made in the Conrail Abandonment Docket.¹⁷ Although the Discontinuance Proceeding and the Conrail Abandonment Docket are interrelated, there was no requirement for the Board/ Director to do an environmental review under the National Environmental Policy Act ("NEPA") as codified at 42 U.S.C. 4321 et seq., in the Discontinuance Proceeding. No environmental review was required for the discontinuance (stemming from a NERSA abandonment) because the foreseeable disposition of the Line occurred within the Conrail Abandonment Docket.¹⁸

¹⁴ Id. at 5-10

¹⁵ The Discontinuance Decision clearly states that the "discontinuance proceeding does not require an environmental review," because the "Line ha[d] already been authorized for abandonment." See Discontinuance Decision, slip op. at 2-3, n. 4.

¹⁶ See Notice of Exemption, filed on January 12, 2023, in Ohi-Rail Corporation – Discontinuance of Service Exemption – In Perry and Muskingum Counties, Ohio, AB 1321X ("Discontinuance Proceeding").

¹⁷ See Board of Perry County Commissioners' Trails Use Request, filed on February 13, 2023, in Conrail Abandonment of Lines in Zanesville, Ohio, AB 167 (Sub-No. 445N) ("Conrail Abandonment Docket").

¹⁸ See Conrail Abandonment Docket, slip op. at 2 (STB served March 13, 2023) ("Perry County's request for a CITU complies with the requirements of 49 C.F.R. 1152.29, and ORDC has notified the Board that it is willing to negotiate an agreement for interim trail use with Perry County. Therefore, a CITU will be issued.")

As noted in FN 9, the history leading up to the railbanking of the Glass Rock Branch was documented in the ORDC Dec Order. ORDC recaps Z&W's history on the Glass Rock Branch in Attachment 1 – Dietrich VS. Collectively this reply (including the Dietrich VS) will demonstrate that contrary to Z&W's allegations, the Director did not commit a material error and no grounds for reopening either the AB-1321X or the Director's decision in AB 167 (445N) dockets exist.

ARGUMENT

The Board should not reopen the Discontinuance Proceeding nor vacate the discontinuance. Generally, the standard to reopen an administratively final action, pursuant to 49 C.F.R. 1152.25(e)(4) must state in detail the respects in which the challenged decision involved material error or is materially affected by new evidence or substantially changed circumstances.”¹⁹ As noted in FN 2, with respect to decisions on abandonments and discontinuances delegated to the Director, in evaluating a director's decision, the Board considers whether the Director made the correct decision, given the circumstances presented (the new evidence, changed circumstances, or material error presented as grounds for reopening).

Here, Z&W does not satisfy either standard as there was no material error of law or any new evidence or substantially changed circumstances;²⁰ the Director acted in accordance with its regulations and precedent and made the correct decision. First, the Director properly followed precedent in the Discontinuance Proceeding, which is interrelated to the ORDC Dec Order and Conrail Aband. Under NERSA, 365 I.C.C. 472, 472 (1981), collectively all of which make clear that

¹⁹ See Norfolk Southern Railway Company – Abandonment Exemption – In Norfolk and Virginia Beach, VA, AB 290 (Sub-No. 293X), 2007 STB LEXIS 706 *3-4 (STB served December 6, 2007). Generally speaking, a party may seek reconsideration of a Board decision by submitting a timely petition that (1) presents new evidence or substantially changed circumstances that would materially affect the case, or (2) demonstrates material error in the prior decision.

²⁰ Z&W's attacks are reminiscent of attacks offered in a 2018 case involving trackage rights. In that case, one of the parties waited until the Board decided the underlying case to introduce evidence regarding its material error claims. See New England Central Railroad, Inc. – Trackage Rights Order – Pan Am Southern LLC, FD 35842 (STB served April 26, 2018). As explained *infra*, Z&W was aware of ORDC plans and chose not to intervene in the discontinuance; thus, the evidence it seeks to enter here is neither new evidence nor substantially changed circumstances.

environmental review was not required for abandonment of certain rail lines authorized pursuant to NERSA and any related discontinuances of operating authority. While Z&W may believe it should not be the case, consummation and disposition of NERSA abandonments were not required to be achieved within any specific time, and no consummation of abandonment on this segment of the line ever was filed.²¹ It is worth noting that Z&W was aware of the ORDC Dec Order and ORDC's plans for the Line; Z&W could have intervened in the discontinuance and should not get to do so now, simply because it chose not to participate when the proceeding was before the Board several years ago.²²

No exception exists to override the NERSA regulations, and no grounds for requiring new abandonment authority or retroactively applying NEPA have been established. Second, precedent is clear that the establishment of trails in itself is not a NEPA triggering activity. Third, ORDC, the Ohi-Rail, and both trails proponents complied with the processes identified to railbank the corridor, none of which mandated an environmental review. Fourth, Z&W attempts to claim it was a shipper or to use crossing removals it was aware of as evidence that ORDC violated NEPA is equally unpersuasive. Collectively, all of the evidence points to the Director making the correct decision: not requiring an environmental review for the discontinuance is fully consistent with the findings in the ORDC Dec Order, and prior Board precedent.²³ The sections below further explain why Z&W has failed to demonstrate that the Director's decision was in any way incorrect, and as such, the Z&W Petition must be denied.

²¹ This is why ORDC maintains a residual common carrier to remove or replace operators over the Glass Rock Branch.

²² See Z&W Petition, at FN 4. Allowing Z&W to raise issues that could have been raised earlier including removal of crossings, see discussion *infra* will harm ORDC and MVPD.

²³ See ORDC Dec Order, slip op. at 6; citing City of Fishers – Petition for Partial Revocation of Exemption, FD 36137 (STB served May 31, 2018).

I. The Director Followed Precedent in the Discontinuance Proceeding By Not Requiring Environmental Review for NERSA Abandonments and Discontinuances.

Z&W's Petition states that "[t]he law requires the Board to conduct an environmental review for this discontinuance before the Board can grant discontinuance authority"²⁴ and focuses on how ORDC's discontinuance, pursuant to the directive in the Board's Petition for Declaratory Order Decision, does not comport with an exception under 49 C.F.R. § 1105.6(c)(5).²⁵ While Z&W focuses on the exception under 49 C.F.R. 1105.6(c)(5), this focus is misplaced as the Board, and its predecessor the ICC have "expressly concluded the agency lacks discretion to conduct an environmental review in NERSA abandonments."²⁶ Congress was well aware of the National Environmental Policy Act at the time of the passage of the NERSA statute/regulations:

"It is the objective of the bill to provide for the continuation of rail service in the northeast and the prevention of significant diversion of traffic to the highways which may have a direct adverse impact on the human environment in the region. On the other hand, formal compliance with requirements for impact statements and judicial review could lengthen the transfer process and could result in serious deterioration of traffic levels as funding is exhausted and service levels deteriorate. ... observance of the NEPA procedures would promote a result inconsistent with its purposes."²⁷

While recognizing the existence of both federal statutes, Congress expressly decided that no NEPA requirements would apply to abandonments initiated as NERSA abandonments. The ICC confirmed this in 1991 in the implementation of environmental laws. See ICC Implementation Of Environmental Laws, Ex Parte No. 55 (Sub-No. 22a) (ICC served July 19, 1991) (stating the environmental laws do not apply to abandonment proposals submitted under the special provisions

²⁴ See Z&W Petition at 15.

²⁵ See Z&W Petition at 5 (stating for discontinuances, an environmental review will be required, unless it is a one 'where the affected line will be continue to be operated). Admittedly, this is the default rule for non-NERSA abandonments and discontinuances even those owned by public entities. In Section 1(A) of its Petition, Z&W also focuses on the environmental concerns of alleged unlawful track removal. ORDC will address this allegedly unlawful past and future track removal in Section IV, *infra*.

²⁶ See Delaware and Hudson Railway Company, Inc. – Discontinuance of Trackage Rights Exemption – In Broome County, N.Y., AB 156 (Sub-No. 27X), 2015 STB LEXIS 277 at *7 (STB served August 13, 2015) ("D&H Discontinuance"); citing Conrail Abans. Under NERSA, 365 I.C.C. 472, 475, Ex Parte 419 (ICC served November 25, 1981).

²⁷ See 127 Cong. Rec. 19512 (1981).

of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981 because **no discretionary Commission action** is involved in those cases. See also 45 U.S.C. § 791 (explicitly providing that NEPA does not apply to any action taken under authority of this chapter).

Congress placed no time limits on consummation of a NERSA abandonment, nor did Congress indicate that if consummation of abandonment for any given rail line authorized for abandonment under NERSA took too long then the applicant would need new to seek renewed abandonment authority or that the provisions of the statute would change or be null and void. It could have if it wished to do so, but it did not. Rather Congress's intent was to ensure the survivability of the national rail network, including Conrail and other privately owned rail carriers. This directive not to conduct an environmental review in NERSA abandonments is codified under 49 C.F.R. 1105.5(c)(1), which states that "the environmental laws are not triggered where the STB's action is nothing more than a ministerial act"²⁸ as in: (1) the proceeding of abandonments proposed under the Northeast Rail Services Act."

In the D&H Discontinuance proceeding, the Board also clarified that this applied to discontinuances. The authority granted in the Discontinuance Proceeding was a ministerial act, and the Director of the Office of Proceeding comported with ICC/STB precedent in not conducting an environmental review.²⁹ Z&W's Petition provides potential reasons why the Board thought it could forgo environmental review, including that "the Board might have thought that the discontinuance fell under [NERSA], which according to Z&W merely exempted certified modified rail certificates and abandonments from environmental review."³⁰ Z&W's argument/rationale is not legally sound and

²⁸ Once the rail line was authorized for abandonment as a NERSA abandonment, any downstream discontinuances were ancillary in that they merely carried out the intent of Congress and the statute.

²⁹ Additionally, the Board had discretion under the regulations to modify the environmental requirements as appropriate. See 49 C.F.R. § 1105.6(d) (the "Board may reclassify or modify these [environmental] requirements for individual proceedings.")

³⁰ See Z&W Petition at 7.

ignores the ICC's function under NERSA. As stated previously, the Board correctly concluded that this was a ministerial act. In D&H Discontinuance, the Board found that no environmental or historic reports were required under NERSA for either discontinuances or abandonments and stated:

We are aware of cases in which the agency acted, without analyzing NERSA, as if our environmental process might apply under analogous circumstances. See Del. & Hudson Ry. – Discontinuance of Trackage Rights Exemption – In Lehigh & Carbon Cntys., Pa., FD 30334 (ICC served Apr. 20 1984); Norfolk S. Ry. – Discontinuance Exemption – In Hudson Cnty., N.J., AB 290 (Sub-No. 212X) (STB served Mar. 13, 2001). Because environmental review is not required under NERSA, and because that statutory principle should not change depending on whether the discontinuance or the abandonment occurs first, the Board now concludes that it was unnecessary for the agency to address environmental matters in those cases. **To the extent those prior decisions indicated otherwise, they were incorrect.**³¹

In the D&H Discontinuance, the Board explicitly excluded any environmental review for D&H's discontinuance from environmental review, stating that "these former Consolidated Rail Corporation (Conrail) lines were long ago authorized for abandonment under the Northeast Rail Service Act of 1981."³² Here, we have an analogous situation, as the Line in question was a former line authorized for abandonment under NERSA.³³ Regardless of whether the discontinuance or abandonment occurred first, no environmental review is permitted because the abandonment was authorized as a NERSA abandonment.³⁴

³¹ See D&H Discontinuance at *7 (emphasis supplied).

³² Id. at *5.

³³ See Norfolk S. Ry. – Discontinuance Exemption – In Hudson Cnty., N.J., AB 290 (Sub-No. 212X); CSX Transportation, Inc. – Discontinuance Exemption – In Hudson County, NJ, AB 55 (Sub-No. 584X) (STB served January 25, 2002) ("The [Conrail abandonment applications] were filed under section 308 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. 748 (3-R Act), a provision that was added by the Northeast Rail Service Act of 1981 (NERSA), enacted as Subtitle E for the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-3. NERSA established separate, expedited procedures for abandonments.")

³⁴ This makes complete sense. In certain cases, abandonments were authorized while the rail line continues to have an operator providing service. In such instances, those railroads cannot consummate their abandonment authority until the operator ceases operations. See Soo Line Railroad Company, D/B/A Canadian Pacific Railway--Abandonment Exemption--In Hennepin County, MN, AB-57 (Sub-No. 40X) (STB served June 26, 1998) (stating we will grant the exemption, subject to environmental and standard employee protective conditions and the condition that CPR may discontinue service but cannot consummate the abandonment of the line until after TCW obtains approval to discontinue its trackage rights). See also Union Pacific Railroad Company—Abandonment Exemption— In Kootenai County, ID, STB Docket No. AB-33 (Sub-No. 272X) (STB served May 4, 2009). The fact that a line may continue to have an operator after the line's owner received

No exception exists to override the NERSA regulations, and no grounds for requiring new abandonment authority or retroactively applying NEPA have been established. Z&W's argument that NERSA's environmental review exemption only applied to Conrail is likewise unsustainable.³⁵ To undergo environmental review when the Line was to be railbanked in the very near future would have been drastic misuse of the Board's resources under the streamlined exemption process.³⁶

II. Precedent is Clear that the Establishment of Trails in Itself is Not a NEPA Triggering Activity.

Interim trail use under the Trails Act is not a federal action that is subject to environmental review under NEPA or a federal undertaking that is subject to review under Section 106 of the National Historic Preservation Act ("NHPA"). See Norfolk Southern Railway Company -- Abandonment Exemption --in Hudson and Essex Counties, N.J., AB 290 (Sub-No. 408X) (STB served September 22, 2020) (confirming interim trail use under the Trails Act is not a federal action that is subject to environmental review under NEPA or a federal undertaking that is subject to review under Section 106 of the NHPA).

Under the Trails Act, a separate statute akin to NERSA, the statute limits the Board's role to a ministerial role, and the statute mandates that the action (implementation of trails) is not a federal action requiring an environmental review. See, e.g., Union Pacific Railroad Company- Abandonment-Wallace Branch, AB-33 (Sub-No. 70) (STB served June 26, 2000); Butte-Silver Bow County-Abandonment Exemption-In Silver Bow County, Montana, AB-597X (STB served July 6, 2002). For this very reason, compliance with any conditions imposed during the environmental review of an abandonment is suspended as long as the entire or applicable portion of a rail line remains railbanked. See, e.g., North Coast Railroad Authority-Abandonment Exemption-

its abandonment authority does not void any abandonment authority previously authorized or impose an obligation on the carrier to refile for abandonment authority once an operator discontinues service.

³⁵ See Z&W Petition at 8-10.

³⁶ See 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service.

in Mendocino, Trinity, and Humboldt Counties, Cal., AB-1305X (STB served June 21, 2022) (stating in FN 4 if an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with these conditions is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement). This concept is commonly referred to by STB practitioners as “What Happens in Trails, Stays in Trails.” The takeaway here is that an environmental review was not required for the involved discontinuance, not only because it stemmed from and was interrelated to a NERSA-authorized abandonment, but also because no environmental review is required to railbank a line subject to the Board’s jurisdiction.

III. ORDC, Ohi-Rail, and Both Trails Proponents Complied with the Processes to Railbank the Corridor, None of Which Mandated an Environmental Review.

The Board, in ruling on the ORDC Dec Order was fully aware of the Glass Rock Branch’s history, its NERSA status, and the foreseeable disposition of the Line. The Board evaluated all such factors in establishing the process for ORDC to railbank the Line under the Trails Act in the Conrail Abandonment Docket, a process that properly excluded an environmental review. The Director in exempting the discontinuance was merely carrying out the process and intent of the Board, which held to railbank the Glass Rock Branch, ORDC (as the current owner holding the residual common carrier obligation to add or remove operators) was to first work with Ohi-Rail to obtain discontinuance authority, then work with any potential trail sponsor to file a request for issuance of a Certificate of Interim Trail Use (“CITU”) in the Conrail Abandonment Docket. ORDC followed this clear directive from the Board. Upon the original trail proponent³⁷, filing the certificate of interim trial use (“CITU”), ORDC filed its consent. The Director issued a CITU on

³⁷ See Board of Perry County Commissioners’ Trails Use Request, filed on February 13, 2023, in Conrail Abandonment Docket.

March 13, 2023. During the first year of negotiations, a replacement trails proponent stepped into the shoes of the Perry County Commissioners.³⁸

Given the Board was fully aware that (1) the foreseeable disposition of the Line was a statutorily-authorized interim trail use arrangement under 16 U.S.C. § 1247(d) (the “Trails Act”),³⁹ (2) that the agency’s predecessor, the ICC, expressly concluded the agency lacks discretion to conduct an environmental review in NERSA abandonments and discontinuances,⁴⁰ there was simply no reason for the Director to require an environmental review in the Discontinuance Proceeding. On April 4, 2025, ORDC and MVPD jointly notified the Board that a trails use agreement was reached and the Line was railbanked, completing the last step in the process identified by the Board in its ORDC Dec Order decision. In the next section, ORDC will dispose of Z&W’s remaining misplaced arguments for why the Director erred in exempting the discontinuance without conducting an environmental review.

IV. Z&W’s Claims of Unlawful Salvage and Attempts to Claim Carrier and/or Shipper Status are Dubious and Unsustainable.

As discussed in FN 23, *supra*, Z&W’s Petition also takes issue with ORDC’s salvage activities by stating that “the Commission has undertaken salvage activities when it took out certain road crossings before seeking discontinuance authority – as early as 2018” and that “it shows every indication of continuing to salvage.”⁴¹ Specifically, Z&W takes issue with the “removed track from the grade-crossing at State Road 93 – railroad milepost 0.83 on Glass Rock East” as it effectively “cut[] Glass Rock East in two and strand[ed] the Z&W’s heritage

³⁸ Subsequent to the initial CITU issued to the Perry County Board of Commissioners on March 13, 2023, the Board issued a replacement CITU to MVPD on April 8, 2024, as the replacement trail sponsor for the Line. This negotiation period was extended for one year in a decision served on March 19, 2025.

³⁹ See also 49 CFR § 1152.29 (providing regulations related to pursuing prospective use of rights-of-way for interim trail use and rail banking).

⁴⁰ See 49 C.F.R. § 1105.5(c)(2) (“environmental laws are not triggered where the STB’s action is nothing more than a ministerial act, as in... (2) Statutorily-authorized interim trail use arrangements under 16 U.S.C. 1247(d)”).

⁴¹ See Z&W Petition at 11.

equipment east of the crossing.”⁴² Z&W’s concerns fail to hold water. First, because the Glass Rock Branch was already authorized for abandonment, no environmental review was necessary. Second, Z&W failed to raise concerns over track removal in the Discontinuance Proceeding when it could have. Third, ORDC consulted with Z&W about its safety concerns and the need to address the crossing.⁴³ Z&W failed to address such concerns, necessitating the removal of the crossing. ORDC committed to working to reestablish the crossing if freight service were ever needed in the future. Fourth, Z&W is not a common carrier impacted by said removal,⁴⁴ and without common carrier status, Z&W has no standing to assert that it is stranded from the interstate rail network due to the removal of the track at SR93.

Although Z&W, in its Petition, aggressively attacked ORDC’s removal of an unsafe crossing as both “unlawful” and asserts that an “ongoing harm of unlawful track removal will occur” without the required environmental inquiry,”^{45,46} Z&W has admittedly known about this track removal since July 30, 2018,⁴⁷ and could have proactively addressed the issue in partnership with ORDC or weighed in before or during the Discontinuance Decision by filing a petition for stay or reconsideration, as directed by the Board.⁴⁸ Yet, the Discontinuance Decision was more than two years ago, and Z&W has waited till the final hour to file its Petition.

⁴² See Z&W Petition at 2, referencing Commission Letter, Exhibit B at 1-2.

⁴³ See FN 13 to the Dietrich VS explains when the crossing at SR 93 became a safety hazard, ORDC agreed to split the cost of repairing the crossing, but Z&W could not provide the matching funds. With no solution in sight, ORDC removed the crossing and notified Z&W should the economic case for rail service develop, it would work with them to restore that crossing. See Exhibit B to Z&W’s Petition to Reopen (corrective filing June 16).

⁴⁴ Nor is Z&W’s Lease with the ORDC (the “Lease”) related to freight Services. See Z&W Petition, Exhibit A at 2 (“WHEREAS, Lessee’s ultimate goal is the operation of a tourist and excursion train…”).

⁴⁵ See Z&W Petition at 10-11.

⁴⁶ Proposed future track removal, as stated in its May 2, 2025 letter, is being done consistent with a trail use agreement between MVPD and ORC, which was authorized by the Board. And as stated previously, environmental laws are not triggered by ministerial acts by the Board, such as approving a trail use agreement. See 49 C.F.R. § 1105.5(c)(2).

⁴⁷ See Z&W Petition, Exhibit B, at 1-2.

⁴⁸ See Discontinuance Decision at 2.

At this juncture, there are grave consequences if the Board were to grant the Z&W's Petition. Specifically, it would effectively cancel out nearly two years of negotiations to railbank the Line, which, *arguendo*, would deter future railroads and trail sponsors from seeking to railbank lines for future reactivation under 16 U.S.C. § 1247(d), a deterrence that goes against Rail Transportation Policy under 49 U.S.C. § 10101.

The most likely reasons Z&W did not intervene in the Discontinuance Proceeding were that Z&W understood, given it was neither a shipper nor a common carrier, ORDC was free to remove the unsafe track as it did not interfere with any railroad's common carrier obligation or point-to-point service to a shipper.⁴⁹ Moreover, ORDC was willing to restore the track over the Glass Rock Branch upon the restoration of freight service, which last occurred nearly three decades ago. ODOT in pulling the crossing surface, committed to reinstalling it at a "50-50 cost share between ORDC and Z&W... after three steps were accomplished."⁵⁰ Yet, Z&W never took the "three steps," which included Z&W seeking common carrier authority from the Board, and likewise made no "efforts to improve safety at the SR93 crossing."⁵¹

⁴⁹ In removing the track in 2018, ORDC neither sought to abandon a rail line subject to the Board's jurisdiction nor interfere with Z&W's common carrier obligations, which it does not possess. While Z&W may claim that the removal of the track was unlawful, ORDC contends that at most it could be construed by the Board as a de facto abandonment, which Board precedent clearly states does not constitute an abandonment. See Honey Creek Railroad, Inc. – Petition for Declaratory Order; Honey Creek Railroad, Inc. – Abandonment Exemption – In Henry County, Indiana, FD 34859, AB-865X, 2008 STB LEXIS 308 *14 (STB served June 2, 2008) (the Board held that a de facto abandonment is not an abandonment, noting that "[i]t is well-settled that a line of railroad can be abandoned only pursuant to Board authority" and that "[a] rail carrier cannot bypass this requirement by unilaterally removing track"); see also Missouri Central Railroad Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company; GRC Holdings Corporation—Acquisition Exemption—Union Pacific Railroad Company, FD 33508, FD 33537, 1998 STB LEXIS 119 (STB served April 28, 1998) (dismissing the contention by parties opposing the acquisition that the line was de facto abandoned from long disuse). Moreover, ORDC provided a path to restore the track at a "50-50 cost share between ORDC and Z&W": (1) Z&W and ORDC enter into a freight lease covering the Glass Rock Branch; (2) Z&W petitions and receives freight rights from the Surface Transportation Board; and (3) a customer who would utilize the rail is identified, necessitating rail service across the SR93 crossing." See Z&W Petition, Exhibit B, at 1. None of these steps were accomplished, and further, Z&W literally cannot provide that ORDC's track removal interfered with Z&W's common carrier obligation, as it is not a common carrier.

⁵⁰ See Z&W Petition, Exhibit B, at 1.

⁵¹ Id.

ORDC wants to make it abundantly clear to the Board that in no way is Z&W a common carrier. Z&W acknowledges this in stating that the 2018 track removal stranded stored “Z&W’s heritage rail equipment” and Z&W “operates “tourist/excursion service on the Line,”⁵² consistent with the Lease.⁵³ The 2018 track removal simply did not interfere with any other railroad’s common carrier obligation and was not unlawful, especially given ORDC’s intent was to make the removal of the unsafe track temporary, pending a future need for restoration of freight service, which never arose. Z&W’s Petition is nothing more than a last-ditch attempt to expand a lease for an excursion railroad,⁵⁴ which Z&W has had significant challenges in insuring and maintaining, while Z&W’s owners continue to assert the need for freight service despite there being no economic case for such service.⁵⁵

CONCLUSION

Z&W has failed to justify reopening the Discontinuance Decision or the interrelated abandonment. There was no material error of law by the Director/Board, as the Director acted in accordance with applicable statutes, regulations, and ICC/STB precedent. As ORDC has explained in its Reply, the Board had no obligation to do an environmental review for NERSA abandonments and discontinuances related to NERSA-authorized abandonments. The Discontinuance Proceeding was merely an ancillary proceeding relating to the foreseeable disposition of the Line in the Conrail Abandonment Docket. No exception exists to override the NERSA regulations, and no grounds for requiring new abandonment authority or retroactively applying NEPA have been established. The establishment of trails in itself is not a NEPA-triggering activity. ORDC, the Ohi-Rail, and both trail proponents complied with the processes identified to railbank to corridor, none of which mandated an

⁵² See Z&W Petition at 1.

⁵³ See FN 32.

⁵⁴ ORDC notes to the Board, here, that while Z&W states that the Petitioner is “Newark, Heath, & Buckeye Lake Scenic Railway doing business as the ‘Zanesville and Western Railroad Company,’” the Lease states that the lessee is “Newark, Heath, & Buckeye Lake Scenic Railway doing business as the ‘Zanesville and Western Scenic Railroad.” See Z&W Petition at 1; Id., Exhibit A at 2.

⁵⁵ See Dietrich VS at 3.

environmental review. Z&W attempts to claim it was a rail carrier, a shipper, and or to use crossing removals it was aware of as evidence that ORDC violated NEPA are equally unpersuasive.

Collectively, all of the evidence points to the Director making the correct decision: not requiring an environmental review for the discontinuance is fully consistent with the findings in the ORDC Dec Order, and prior Board precedent. Because Z&W has failed to demonstrate that the Director's decision was in no way incorrect, the Z&W Petition must be denied.

Respectfully submitted,

/s/ ***Crystal M. Zorbaugh***

**Crystal M. Zorbaugh
Spencer M. Naake
MULLINS LAW GROUP PLLC
2001 L St., N.W.
Suite 720
Washington, D.C. 20036
Tel.: (202) 663-7831**

July 7, 2025

**Special Counsel for the Ohio Rail Development
Commission**

cc: Parties of Record

Attachment 1

VERIFIED STATEMENT OF MATTHEW DIETRICH

I, Matthew Dietrich, am the Executive Director of the Ohio Rail Development Commission (“ORDC”), a position I have held for going on 18 years. Prior to becoming the Executive Director for the ORDC, I served as Secretary-Treasurer of the Commission from 2000 to 2007 and held various roles at the Ohio Department of Development for an additional five years. Since 2008, I have been involved in negotiating and granting operating rights to The Zanesville and Western Scenic Railroad (“Z&W”) and the Newark, Heath & Buckeye Lake Scenic Railway (“NHBLSR”)^{1, 2} to provide storage services and excursion operations over the ORDC rail lines known as the Glass Rock Branch, which is currently railbanked.³ I am authoring this verified statement to respond to certain allegations made by Z&W concerning its status as a rail carrier, potential freight traffic over the Glass Rock Branch, and Z&W’s late raised claims that it is a shipper over the Glass Rock Branch.

I. Correcting the Record on Z&W’s Operations/Status⁴

In December of 2007, ORDC entered a four-month lease with Z&W for the storage of various railroad equipment⁵ on the Fultonham Running Track between MP 0.0 and State Route 93 (the leased Premises). As is true for any lease, Z&W, as the lessee, had to maintain the rail trackage to specified standards, abide by various restrictions, and maintain adequate insurance. This original 2008 lease⁶ was amended several times: In the ORDC Lease Control Number 2008-04, the lease footprint was expanded to include additional parcels on the Glass Rock Branch and to expand the permitted uses to support storage operations, subject to certain restrictions.⁷ From 2008-2011, the lease for storage and rail line

¹ The excursion railroad has gone by Z&W and NHBLSR at various times.

² Z&W and NHBLSR are referred to collectively as “Z&W.”

³ Z&W was aware of ORDC’s steps towards railbanking the unused portions of the Glass Rock Branch after the current operator sought discontinuance authority. See Exhibit 1 – Emails between ORDC and Z&W from January 2021 regarding Ohio Rail Development Commission – Petition for Declaratory Order, FD 36387 (STB served Dec. 22, 2020).

⁴ ORDC and Z&W have copies of the leases described herein. Because of the page limitations on replies to petitions to reopen, copies of every lease are not included. ORDC would be happy to provide them if the Board believes it would be useful to decide the issue before it.

⁵ Equipment was limited to one locomotive, two cabooses, one gondola, two maintenance-of-way cars, and four coaches unless prior written consent of ORDC was obtained. Pursuant to terms of the lease, “Lessee was to install derails at both ends of the Leased Premises and had no rights whatsoever to operate across the SR 93 crossing.”

⁶ In April of 2008, Z&W proposed a comprehensive business plan to ORDC, setting forth its proposed excursion operations and desire to provide excursion services over ORDC-owned rail lines (the Glass Rock Branch); Z&W also expressed a desire to one day provide freight service with ORDC’s permission.

⁷ **“Allowable Uses:** Lessee may use and occupy the Leased Premises for the following purposes: 1) to store locomotives, cabooses, gondolas, maintenance of way cars, maintenance equipment, coaches, and other rail equipment as authorized by ORDC, which shall hereinafter be referred to as “Cars and Equipment”; 2) to cut and remove brush from the Leased Premises with the advanced written consent of ORDC; 3) to inspect the Leased

maintenance purposes was extended multiple times.⁸ In June 2012, the parties entered an additional lease, which allowed for limited excursion operations to commence contingent upon the lessee performing certain specified maintenance work between July 2012 and December 2012. The parties next entered a four-year lease commencing January 24, 2013, and expiring on December 31, 2017, again contingent on Z&W meeting certain milestones, and failure to meet said milestones was to be deemed a default under Article 8.

The first nine years of Z&W's operations saw its challenges.⁹ Despite these challenges, ORDC continued to work with Z&W and entered into a five-year lease (through December 31, 2023)¹⁰ to facilitate certain agreed-upon uses: 1. Excursion service, with the previous written consent of the Executive Director of ORDC; 2. Regular maintenance and inspection activities, including any required FRA inspections and maintenance required to maintain appropriate standards of track and equipment; 3. Storage and movement of equipment needed to perform items 1 and 2 of this list, and 4. Any additional activities previously approved in writing by the Executive Director of ORDC, as specified in Article IV of the Lease Agreement 11-201801. Activities not specifically listed were prohibited without the express written consent of the Executive Director of ORDC. Unfortunately, in June 2019, ORDC served notice on Z&W denying operation of the excursion service for failure to complete the maintenance activities outlined in the 2019 Work Plan.¹¹

Despite the challenges, the parties continued to work together, and in May 2020, the parties agreed to extend the lease through December 31, 2031.¹² During the 18 years that the parties have worked together, Z&W has speculated about potential freight that could be served on the line, but it could not

Premises as described below; 4) to make repairs to the track, roadbed, and structures of the Leased Premises with the advanced written consent of the ORDC; and 5) move Cars and Equipment for purposes of storage at East Fultonham with the advanced written consent of ORDC."

⁸ Lease Control No. 2008-04 (extended the lease one year through Sept. 2009); Lease Control No 2009-01 (extended the lease for two years through Sept. 2011 and expanded uses to include 6) to conduct maintenance activities on Cars and Equipment stored on the Lease Premises; and, 7) to conduct events on the Leased Premises with the advanced written consent of ORDC); and, Lease Control No. 2011-02 (extended the lease through June 30, 2012).

⁹ Examples of some challenges include in August 2018, a cease-and-desist order was temporarily issued to the rail line for failure to maintain required insurance policies. There were claims of unauthorized dumping of materials along the line. Z&W engaged in brush removal without prior approval. The railroad improperly stored excessive rail ties in the yard and adjacent to the rail line. The Glass Rock Branch also experienced drainage issues. A volunteer improperly stored rail cars, which were used for not used for excursions, maintenance, or inspection on the line, and notice of removal had to be given. All the while Z&W worked to find the monies to support its desire to host limited tourism operations.

¹⁰ This was partially included as Exhibit A to Z&W's Petition to Reopen (corrective filing June 16).

¹¹ Exhibit 2 – June 4, 2019 ORDC letter to William Ratz (Z&W)

¹² This was included as Exhibit A to Z&W's Petition to Reopen (corrective filing June 16).

satisfy basic financial outlays related to the rights it held.¹³ ORDC's research on freight opportunities has revealed they are speculative at best. Contrary to Z&W's claims, ORDC never "restricted Z&W's operations" over its advocacy for freight traffic. When operations were restricted, it was because Z&W breached the terms of its lease and/or safety concerns that Z&W refused to remedy warranted such restrictions.¹⁴

At all times, Z&W has been a tourism/excursion operation. Z&W has never been a shipper, nor did it make a demand for common carrier service. It never provided common carriage freight and passenger transportation and was not part of the general interstate rail system, as the railroad specifically noted on the front of its 2010 Timetable.¹⁵ Moreover, not all of the equipment¹⁶ stored on the rail line came in by rail, in part, because from the beginning, the lease did not permit Z&W to move equipment along the Leased Premises.¹⁷ Despite Z&W stating that the track was offered for rail service for more than 40 years, Z&W is well aware that the Glass Rock Branch last provided freight service approximately three decades ago.¹⁸ Related to prior operations, Stone Consulting, Inc. authored a report on the Glass Rock Branch in May 2015: this report revealed that a decade ago, two bridges alone needed over half a million in work and were not in compliance with FRA standards.

In closing, ORDC¹⁹ carefully crafted its arrangement with the Muskingum Valley Park District ("MVPD") to ensure that Z&W's current lease remains intact and current scenic railroad operations are not impacted by a transfer. No removal of rail infrastructure west of Old Town Road, which is used for current Z&W operations, is planned by ORDC. The simple matter is that the economic case for freight service does not exist, and until it does, the community and the state are best served by railbanking the corridor for potential reactivation of rail service one day.

¹³ For example, when the crossing at SR 93 became a safety hazard, ORDC agreed to split the cost of repairing the crossing, but Z&W could not provide the matching funds. With no solution in sight, ORDC removed the crossing and notified Z&W should the economic case for rail service develop, it would work with them to restore that crossing. See Exhibit B to Z&W's Petition to Reopen (corrective filing June 16).

¹⁴ See Exhibit C to Z&W's Petition to Reopen (corrective filing June 16) explaining a couple of crossings removed by ODOR due to safety concerns.

¹⁵ Exhibit 3 includes the first two pages of the timetable.

¹⁶ The railroad equipment stored on the leased premises includes operable and inoperable rail equipment, some of which is owned by Z&W, and some is not. Moreover, certain of the equipment does not appear to be safe to operate over the interstate rail network.

¹⁷ See Exhibit 4 – an August 10, 2009 letter from Matt Dietrich authorizing storage of specified equipment. In January 2010, ORDC also authorized the storage of a caboose to be moved by truck to Fultonham Yard.

¹⁸ See Exhibit C to Z&W's Petition to Reopen (corrective filing June 16). In around 2007, ORDC orchestrated a project that invested approximately \$1,000,000 in public and private funds to improve the line shortly before traffic ceased.

¹⁹ See Exhibit C to Z&W's Petition to Reopen (corrective filing June 16).

Verification

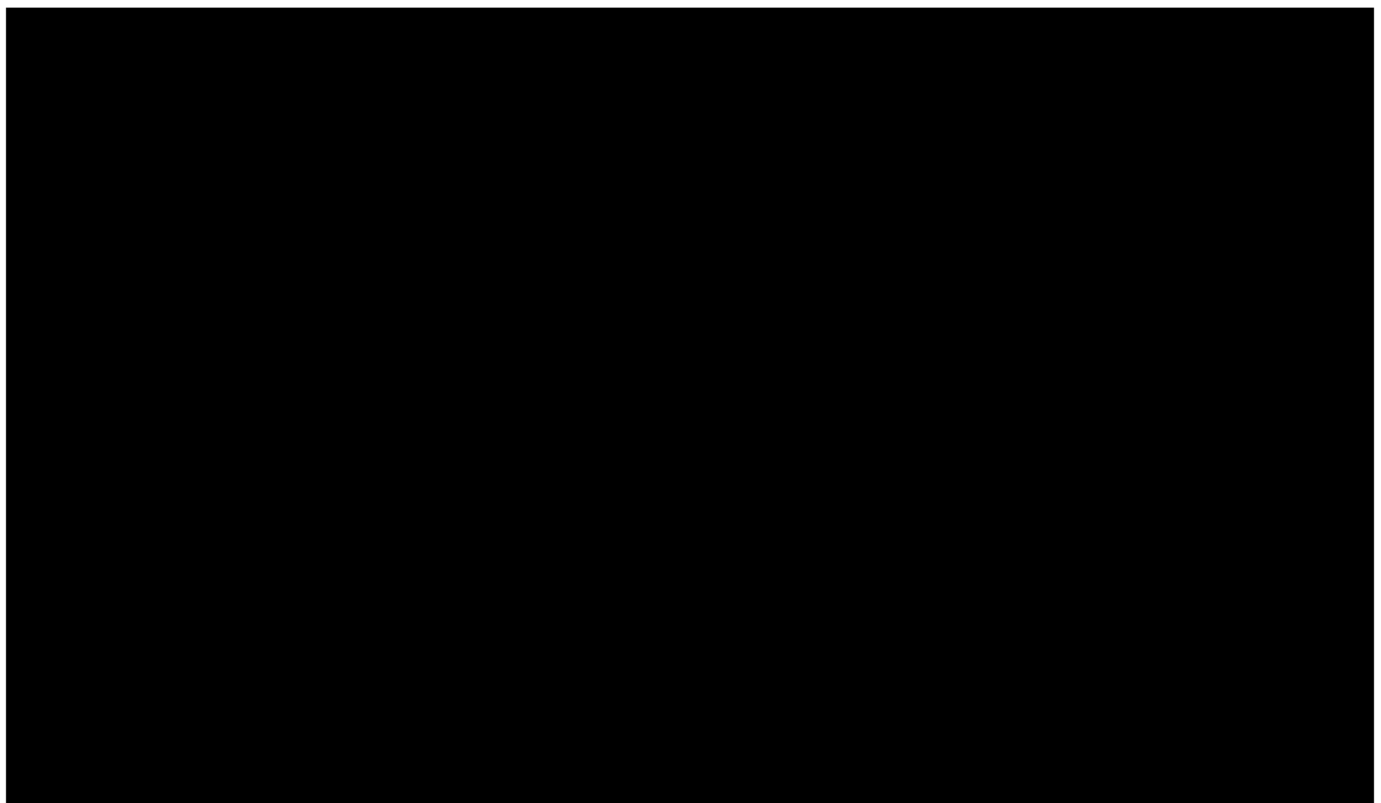
I, Matthew Dietrich, verify under penalty of perjury that I am the Executive Director of the Ohio Rail Development Commission ("ORDC"), that I have read the foregoing document and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on July 1, 2025.



Matthew Dietrich, Executive Director
Ohio Rail Development Commission

EXHIBIT 1



From: Megan.McClory [REDACTED]

Sent: Friday, June 27, 2025 2:52 PM

To: Spencer Naake [REDACTED]; Crystal Zorbaugh [REDACTED]

Cc: Matt.Dietrich [REDACTED]; Alan Klodell [REDACTED]

Subject: ORDC - Glass Rock Branch - FW: STB decision

Documentation of Z&W's awareness of STB proceedings, below.

Megan McClory (she/her)

Secretary-Treasurer

Ohio Rail Development Commission



From: McClory, Megan

Sent: Friday, January 29, 2021 10:31 AM

To: wratz [REDACTED]

Cc: scott.dunbar [REDACTED]

Subject: RE: STB decision

Bill,

We are setting up a conference call next week to discuss, but this is part of trying to clean up the operation of the rail line in the eyes of the STB. This is part of the longer-term plans we had talked about in terms of getting ownership & control of the entire line into local hands. We don't anticipate any impact to the Z&W's excursion operations but are happy to discuss.

Megan

Ohio | Rail Development Commission

Megan McClory, Secretary-Treasurer

From: [wratz](#)
Sent: Friday, January 29, 2021 7:59 AM
To: McClory, Megan <[Megan.McClory](#)>
Cc: [scott.dunbar](#)
Subject: STB decision

Megan,

STB decision id 50510 docket number FD_36387, OHIO RAIL DEVELOPMENT COMMISSION--PETITION FOR DECLARATORY ORDER, has recently come to my attention. As it concerns the Glass Rock Line which we lease a part of, we, the Z&W, would like to know what is happening. Would you please let us know what is being done and how it affects the Z&W. We would like to meet with you to discuss this. It could be in person, by phone, or internet Zoom. Thanks for your help and consideration.

Respectfully,

Bill Ratz, President Z&W Scenic Railroad

CAUTION: This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to csc@ohio.gov or click the Phish Alert Button if available.

EXHIBIT 2

June 4, 2019

Newark Heath & Buckeye Lake Scenic Railway
dba: Zanesville & Western Scenic Railroad ("ZWSR")
Mr. William Ratz, President
439 Oakland Park Avenue
Columbus, OH 43214-4150

Dear Mr. Ratz,

Please consider this letter the Ohio Rail Development Commission's (ORDC) denial to allow the ZWSR to operate excursion service. This denial is based on the fact that the ZWSR did not complete the list of maintenance activities performed in accordance with its 2019 Work Plan as submitted to the ORDC on February 14, 2019.

The plan submitted by ZWSR and approved by ORDC indicated the work items would be finished by 05/31/2019. ORDC performed a site inspection on Monday, June 3, 2019. Based on that site inspection, ZWSR is not in compliance with the lease agreement since there are many items that still need completed. Below is a list of outstanding issues that must be completed prior to ORDC providing its approval to initiate excursion service:

- The No Trespassing sign was not replaced on the west side of Coopermill Road.
- The metal sheets were removed from the right-of-way; but, they were not removed from the property.
- East Fultonham Yard has not been cleared of excess ties, weeds and brush.
- The air compressor has not been removed from the East Fultonham Yard.
- Remove the shredded ties from East Fultonham yard.

ORDC takes its stewardship of the property and the safety of the public very seriously. The ZWSR was granted an agreement to not only assist with Perry County's efforts to improve tourism but also to assist ORDC with property management responsibilities. The ZWSR has not met its commitments in that regard creating potential safety issues for the public. ORDC is withholding approval for any excursions until the property is cleaned up to our satisfaction. No excursions may be operated without written consent from the ORDC. If any excursions occur prior to ORDC granting permission for them to resume, the Lease with the ZWSR will be immediately terminated.

If you have any question, please contact Sherrie Pritchard, ORDC Property Manager at (614) 466-7170.

Sincerely,

A handwritten signature in dark ink, appearing to read "Matthew Dietrich".

Matthew Dietrich
Executive Director

cc: Scott Dunbar
Perry County Commissioners
Muskingum County Commissioners
Randall Schumacher, Public Utilities Commission of Ohio
Jason Sturgeon, District 5 Deputy Director, Ohio Department of Transportation

EXHIBIT 3

DRAFT
COPY



ZANESVILLE AND WESTERN SCENIC RAILROAD

EAST FULTONHAM, OHIO

SYSTEM TIMETABLE NUMBER

1

Effective 12:01 AM
June 1, 2010

For the Government of Employees Only

William Ratz
President

Charlie Thomas
Trainmaster

Thomas D. Barnett
MW Designate 49CFR 213.7

SAFETY IS ALWAYS FIRST PRIORITY

FORWARD

The Z & W Scenic Railroad is a 501(c)3 organization and by definition 49CFR, Part 209, does not provide common carriage freight and passenger transportation, and is not part of the general system of transportation within the U.S.

On January 9, 2008 the Z & W Scenic Railroad was formed to operate a part of the Ohio Rail Banked program line between FS and Glass Rock, Ohio, via East Fultonham, Ohio, in Muskingum and Perry counties of Ohio.

The mission of the Z & W Scenic Railroad is to provide a tourist destination and excursion train on an exceptionally scenic and historic rail line.

The near term goal of the Z & W Scenic Railroad is to activate the line, initially the first mile of East Fultonham depot as and under Excepted Track Rules as defined under 49CFR, Part 213 Track Safety Standards. Following activation under Excepted Track rules, the line will be rehabilitated by the Z & W Scenic Railroad and re-inspected for reclassification to a non-excepted FRA Class I Track Safety Standard. Upon approvals by appropriate regulatory and development entities, the Z & W Scenic Railroad's goal is to offer seasonal and special passenger excursion train service.

CONTACTS

ZANESVILLE AND WESTERN
SCENIC RAILROAD
PO BOX 32
East Fultonham, Oh 43735

Charlie Thomas	Trainmaster	740-281-7431	charlie thomas@zwsr.org
William Ratz	President	614-595-9701	wratz@columbus.rr.com
Art Ruck	Director MOW	614-496-8897	mow@ZWSR.org
Ed Gallis	Track Supvr.	740-408-3285	track supervisor@ZWSR.org
Tom Barnett	Designate 49CFR 213.7	330-323-0764 cell 330-738-2325 home	tombarnett01@verizon.net
Ron Jedlicka	Advisor to the Board	614-946-1234 cell 740-927-4985 home	pete@rpmrigging.com

SAFETY IS ALWAYS THE FIRST PRIORITY

EXHIBIT 4



Ohio Rail Development Commission

1980 West Broad Street • Columbus, Ohio 43223
614-644-0306 (telephone) • 614-728-4520 (fax) www.dot.state.oh.us/ohiorail

August 10, 2009

Mr. William Ratz, President
Zanesville & Western Scenic Railroad
439 Oakland Park
Columbus, Ohio 43214

Dear Mr. Ratz:

Pursuant to your request submitted to the ORDC on August 5, 2009, ORDC Lease Number 2008-04, and First Amendment 2008-04-1, I hereby authorize the Newark, Heath, and Buckeye Lake Scenic Railway, doing business as the Zanesville and Western Scenic Railroad (Z&W), to store the following equipment as described:

Equipment	Location
1 SW1 Locomotive	Current location (SR93 area)
2 Cabooses	Current location (SR93 area)
4 Passenger Coaches	Current location (East of SR 93)
1 Gondola car	Current location (East of SR 93)
1 Hopper car	West of Crock Rd near SR 93 (to be delivered by truck)
1 45 ton GE locomotive	Fultonham yard area (to be delivered by truck)
1 35 ton Plymouth locomotive	Fultonham yard area (to be delivered by truck)
1 Burro crane	Fultonham yard area (to be delivered by truck)

Please note that this authorization to store equipment does not permit the movement of equipment along the Leased Premises. Feel free to contact the ORDC if you have any questions.

Respectfully,

Matthew R. Dietrich, Executive Director

C: Evelyn Winkfield, ORDC
Alan Klodell, Ohio Attorney General's Office