

SERVICE DATE – JULY 30, 2025

SURFACE TRANSPORTATION BOARD

DECISION

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

COLORADO LANDOWNERS—ADVERSE ABANDONMENT—
GREAT WESTERN RAILWAY OF COLORADO, LLC IN WELD COUNTY, COLO.

Digest:¹ This decision denies an application for adverse abandonment of a rail line in Weld County, Colo.

Decided: July 28, 2025

On October 5, 2022, a group of landowners (Landowners)² filed an application³ under 49 U.S.C. § 10903 asking the Board to authorize the third-party, or “adverse,” abandonment of approximately 6.2 miles of rail line (the Line) owned by Great Western Railway of Colorado, LLC (Great Western), in Weld County, Colo. (Landowners Appl. 2.) Notice of the application was served and published in the Federal Register on October 25, 2022 (87 Fed. Reg. 64,532). As discussed below, the Board will deny the Landowners’ application.

BACKGROUND

The Line extends from milepost 0.0 at or near Johnstown, Colo., to milepost 6.2 at or near Welty, Colo. (Landowners Appl. 2.) The Line primarily served the sugar beet industry until the 1970s but fell into disuse when the local sugar beet industry shut down. (*Id.* at 3.) Although the Board authorized Great Western to abandon the Line in 2008, the abandonment authority expired without being exercised. See Great W. Ry. of Colo.—Aban. Exemption—in Weld Cnty., Colo., Docket No. AB 857 (Sub-No. 1X). On April 6, 2022, Great Western filed an environmental and historic report in a new abandonment docket, Great Western Railway of Colorado—Abandonment Exemption—in Weld County, Colo., Docket No. AB 857 (Sub-

¹ 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).

² The 27 Landowners are listed in Appendix 1 to the application. (Landowners Appl. 2 n.1; see also *id.*, App. 1.)

³ Although the application was submitted on August 18, 2022, it is considered filed on October 5, 2022, to satisfy procedural requirements related to the Landowners’ revised environmental and historic report filed on September 13, 2022, and further amended on September 15, 2022. See Colo. Landowners—Adverse Aban.—Great W. Ry. of Colo. in Weld Cnty., Colo., AB 857 (Sub-No. 2), slip op. at 1 (STB served Sept. 7, 2022).

No. 3X). However, Great Western has not applied for renewed abandonment authority for the Line. The Line therefore remains part of the interstate rail network within the Board's jurisdiction. See 49 C.F.R. § 1152.29(e)(2); Honey Creek R.R.—Pet. for Declaratory Ord., FD 34869 et al., slip op. at 4-5 (STB served June 4, 2008).

In their October 5, 2022 application for adverse abandonment, the Landowners state that they own land adjacent to and within the right-of-way of the Line, and that land within the right-of-way is burdened by an easement that permits Great Western's use of that property for railroad purposes. (Landowners Appl. 3-4.) According to the Landowners, the public convenience and necessity permit abandonment because the Line has not been used for 43 years, reinstating rail service is not feasible, and abandonment of the Line will benefit the public by allowing the Landowners to put their land to productive use. (Id. at 8-16.) The Landowners also ask the Board to waive the Trails Act provisions of 49 C.F.R. § 1152.29, arguing that applying those provisions here, where the Landowners oppose trail use on the Line, would be inconsistent with a grant of adverse abandonment. (Id. at 18.)

Great Western filed a reply to the Landowners' application on October 14, 2022, in which Great Western argues the Landowners have not shown that the current and future public convenience and necessity permit abandonment because Great Western is making efforts to reinstitute rail service on the Line. (Great Western Reply 8, 10-12.) Great Western also describes discussions with potential shippers and planned repairs to the Line. (Id. at 6-7, 12.) On October 31, 2022, the Landowners filed a surreply arguing that the potential for future rail use of the Line is too speculative to rebut the Landowners' showing. (Landowners Surreply 4, 7-8.)

On November 18, 2022, Great Western filed a protest of the Landowners' adverse abandonment application pursuant to 49 C.F.R. § 1152.25(a)(1), which reiterates and supplements the arguments set out in Great Western's reply and provides additional information and documentation about Great Western's efforts to rehabilitate the Line and reinstitute rail service. (Great Western Protest 6-7, 9, 11, 15.) The Landowners replied to Great Western's protest on December 5, 2022, arguing that the materials provided by Great Western do not establish a need for future transportation over the Line. (Landowners Reply 4 n.8, 7.)

On January 17, 2023, Great Western filed environmental comments in response to the Board's December 14, 2022 Draft Environmental Assessment. The environmental-related substance of Great Western's comments was addressed in the Final Environmental Assessment (Final EA) published on May 19, 2023, but Great Western's environmental comments also contain information and evidence related to Great Western's efforts to restore service on the Line that are relevant to this decision. (Great Western Env't Comment 7-9.)

The Board also received two letters from the Town of Johnstown, Colo. (Town). First, on August 18, 2022, the Town filed a letter stating that it supports abandonment of the Line. Then, on June 4, 2024, the Landowners filed a request for leave to file out of time a second letter from the Town, dated May 24, 2024, which affirms the Town's support of the proposed abandonment, and also includes an update on the status of the Line. (Landowners Req. to File Letter, Ex., June 4, 2024.) Great Western moved to reject the Landowners' filing containing the

second Town letter on June 20, 2024, alleging improper service. In an order issued on August 15, 2024, the Landowners' filing was accepted into the record, the applicable service requirements were waived, and Great Western was directed to respond to the substance of the Town's second letter. Great Western filed a response and a renewed motion to reject the Town's second letter on August 27, 2024, in which Great Western provides additional information about the status of the Line, reiterates its objections to various service issues, and argues that the Board does not have authority to grant abandonments filed by third parties under 49 U.S.C. § 10903. (Great Western Mot. to Reject 1-3, Aug. 27, 2024.)

PRELIMINARY MATTERS

Procedural issues.

Great Western lodges procedural challenges to multiple filings, claiming that the Landowners did not comply with the Board's rules. Great Western alleges that the Landowners' application for adverse abandonment was never served on Great Western's counsel and therefore should have been rejected. (Great Western Protest 5; Great Western Mot. to Reject 1, June 20, 2024; Great Western Mot. to Reject 1, Aug. 27, 2024.) Great Western likewise asks the Board to reject the Landowners' June 4, 2024 filing because it was not served on each "party of record" listed on the Board's website for this proceeding.⁴ (Great Western Mot. to Reject 1, June 20, 2024; Great Western Mot. to Reject 1, Aug. 27, 2024.) To the extent service on the parties did not fully comply with the Board's rules, the Landowners are reminded that they are expected to comply with the Board's service requirements and serve all parties of record listed on the Board's service list for this proceeding. However, Great Western does not allege any harm resulting from the purported improper service, and the service issues do not appear to have deprived Great Western of its ability to participate in this proceeding. The Board therefore declines to reject either document, and Great Western's renewed motion to reject the Landowners' June 4, 2024 filing will be denied.

Great Western also alleges that the Landowners' notice of intent to file an abandonment application was not served or published in accordance with the time limits set out in 49 C.F.R. § 1152.20(b) and did not comply with the notice of intent language approved by the Board in its February 11, 2022 decision.⁵ (Great Western Reply 5; Great Western Protest 5.) These

⁴ The Board's website identifies four individuals as "parties of record" in this proceeding: two attorneys who represent Great Western, and two attorneys who represent the Landowners (one of whom filed, signed, and submitted the filing). The Board's procedural rules state that when a party is represented by counsel, service upon the attorney is deemed to be service upon the party. 49 C.F.R. § 1104.12(a). The attorneys themselves are not parties of record, but when a document is served on a party represented by multiple attorneys, copies should be provided to each of that party's attorneys.

⁵ The issues raised by Great Western also include several concerns related to the Landowners' environmental and historic report. (See Great Western Reply 3-4; Great Western Protest 3-4; Great Western Env't Comment 2-6.) The issues concerning the environmental and historic report were addressed in the Final EA issued by the Board's Office of Environmental

procedural rules are intended to ensure that members of the public receive adequate notice regarding Board proceedings that affect their interests, and the Board expects full compliance with these rules from parties in Board proceedings. Great Western does not identify any actual or potential harm to the public arising from these procedural issues, however, nor does Great Western ask the Board to reject the application or take any action in response. Additionally, the denial of the Landowners' application renders this issue moot. The Board therefore declines to rule on these challenges.

The parties also raise multiple issues concerning the Board's rules on replies to replies. The Landowners request permission to file a surreply to Great Western's October 14, 2022 reply, arguing that a surreply is necessary to correct errors and misstatements in Great Western's reply. (Landowners Req. to File Surreply 1, Oct. 31, 2022.) Great Western asks the Board not to accept the Landowners' surreply, arguing that the Landowners do not identify any errors or misstatements in Great Western's reply. (Great Western Protest 6.)

While the Board has in the past often accepted replies to replies, such filings are prohibited under the Board's regulations. See 49 C.F.R. § 1104.13(c); see Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025) (explaining that § 1104.13(c) will be more strictly enforced going forward to promote the orderly and efficient administration of cases). The Landowners' surreply, however, addresses verified statements from prospective shippers identified in Great Western's reply that were likely unavailable when the Landowners submitted their application for adverse abandonment. In light of these circumstances, and given the Board's past acceptance of replies to replies in this proceeding, see Colo. Landowners—Adverse Aban.—Great W. Ry. of Colo., in Weld Cnty., Colo., AB 857 (Sub-No. 2), slip op. at 2 n.4 (STB served Feb. 11, 2022), the Board will exercise its discretion to accept into the record all filings submitted to date.⁶

Finally, on April 30, 2025, the Landowners filed a request for expedited consideration, seeking a decision by June 30, 2025. (Landowners Req. for Expedited Consideration 2.) The Landowners state their intent to seek a writ of mandamus if the case is not decided by the requested date. (*Id.* at 2.) On May 13, 2025, Great Western filed a letter responding to Landowners' stated intent to seek mandamus. The service date of this decision renders the Landowners' request to expedite moot.

Landowners' interest in the proceeding.

Great Western argues that the Landowners have not shown that they have a proper interest in this proceeding. (Great Western Protest 11.) The Landowners state that they all own land adjacent to and within the right-of-way of the Line, and they seek adverse abandonment of

Analysis. See Colo. Landowners—Adverse Aban.—Great W. Ry. of Colo., in Weld Cnty., Colo., AB 857 (Sub-No. 2), slip op. at 2-4 (STB served May 19, 2023).

⁶ The Landowners also supplemented the record on October 20, 2022, in response to procedural issues identified by Great Western, by filing a document that the Landowners state is intended to "establish a timeline of service of documents" in this proceeding. (Landowners Timeline 1.)

the Line under 49 U.S.C. § 10903 so that they can pursue a state law claim to free the land from the railroad easement. (Landowners Appl. 3-4.) However, only Fred Weis, Cindy Sauer, Sauer Phantom 5 LLC, and Sauer West LLC provide corroborating information establishing their ownership of the relevant land. (See Landowners Appl., Apps. 6-7.) All other landowners provide only a name and mailing address. (See *id.*, App. 1.) Regardless, the Board will consider the application, as a subset of the Landowners have established a proper interest in this proceeding through their property interests. See Modern Handcraft, Inc.—Aban. in Jackson Cnty., Mo., 363 I.C.C. 969, 971 (1981).

DISCUSSION AND CONCLUSIONS

The Board has exclusive and plenary jurisdiction over rail line abandonments in order to protect the public from an unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. Norfolk S. Ry.—Adverse Aban.—St. Joseph Cnty., Ind. (Norfolk S. Ry. 2012), AB 290 (Sub-No. 286), slip op. at 4 (STB served Apr. 17, 2012); Modern Handcraft, Inc., 363 I.C.C. at 972. Under 49 U.S.C. § 10903(d), the standard that applies to any application for authority to abandon or discontinue a line of railroad, including in the third-party, or adverse (involuntary), abandonment context, is whether the present or future public convenience and necessity (PC&N) require or permit the proposed abandonment or discontinuance. In making the PC&N finding, the statute requires the Board to “consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.” § 10903(d). The Board must also take the goals of the Rail Transportation Policy (RTP), see 49 U.S.C. § 10101, into consideration in making a PC&N determination.

In describing the PC&N standard, the Board has typically explained that it will consider “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.” See, e.g., Alloy Prop. Co.—Adverse Aban.—Chi. Terminal R.R. in Chi., Ill., AB 1258, slip op. at 2 (STB served Apr. 30, 2018); see also Seminole Gulf Ry.—Adverse Aban.—in Lee Cnty., Fla., AB 400 (Sub-No. 4), slip op. at 5-6 (STB served Nov. 18, 2004) (“In implementing this standard, we must balance the competing benefits and burdens of abandonment or discontinuance on all interested parties, including the railroad, the shippers on the line, the communities involved, and interstate commerce generally.”). Applicants seeking adverse abandonment bear the burden of proof to show that the PC&N permit or require abandonment. See, e.g., Waterloo Ry.—Adverse Aban.—Lines of Bangor & Aroostook R.R. in Aroostook Cnty., Me., AB 124 (Sub-No. 2) et al., slip op. at 5 (STB served May 3, 2004). The Board has described this as a “heavy burden.” Norfolk S. Ry.—Adverse Aban.—St. Joseph, Cnty., Ind. (Norfolk S. Ry. 2008), AB 290 (Sub-No. 286), slip op. at 5 (STB served Feb. 14, 2008).

The statutory scheme informs how the Board weighs interests. The Board has a “statutory duty to preserve and promote continued rail service,” N.Y. Cross Harbor R.R. v. STB, 374 F.3d 1177, 1187 (D.C. Cir. 2004), and this duty is of paramount importance in adverse abandonment proceedings, where a carrier does not file an application indicating that it “intends to abandon any part of its railroad lines.” 49 U.S.C. § 10903(a)(1).

Consistent with its statutory obligations, the Board has made clear that an adverse abandonment application may only be granted in limited circumstances and has given the potential for continued freight service near dispositive weight when assessing the PC&N in adverse abandonment proceedings. Seminole Gulf Ry., AB 400 (Sub-No. 4), slip op. at 5, 6; see also Consol. Rail Corp. v. ICC, 29 F.3d 706, 712 (D.C. Cir. 1994) (“The key to the Commission’s conclusion was that no use existed for the [rail line] and it therefore did not serve the public convenience and necessity.”). Indeed, in assessing the merits of an adverse abandonment request, the Board is “mindful of Congress’ intent, as expressed in many statutory provisions, that lines be kept within the rail system where possible.” Norfolk S. Ry. 2008, AB 290 (Sub-No. 286), slip op. at 5.

Since the Board was established in 1996, it has not granted adverse abandonment that would result in an active shipper losing rail service with the exception of one decision that was vacated on appeal.⁷ In New York Cross Harbor, the United States Court of Appeals for the District of Columbia Circuit vacated a Board decision granting an adverse abandonment in which the Board concluded that New York City’s interests in putting the property to “other public uses” outweighed “need for the rail service” given the “relatively little” traffic on the line and other transportation options available to shippers. 374 F.3d at 1181 (quoting N.Y.C. Econ. Dev. Corp.—Adverse Aban.—N.Y. Cross Harbor R.R. in Brooklyn, N.Y., AB 596, slip op. at 7 (STB served May 12, 2003)). Among other things, the Court faulted the Board for failing to acknowledge its statutory duty to preserve and promote rail service, including a “fail[ure] to explain what effect its action w[ould] have on shippers’ options and competition generally.” Id. at 1187-88. It also criticized the Board for improperly shifting the burden to the objecting carrier to come forward with sufficient evidence of hardship or harm. N.Y. Cross Harbor R.R., 374 F.3d at 1186-87. And it found that the agency deviated from its own precedent without adequate explanation, noting that the agency had never granted an adverse abandonment when the carrier was operating over the line. Id. at 1181-83. The Court concluded that the Board failed to “properly balance all of the competing interests involved” and gave too much weight to the interests of the applicant. Id. at 1184, 1188.

Even where no shippers are actively using the rail line, the Board will deny an adverse abandonment application where the Board “cannot say that there is no potential for continued rail

⁷ In one case, the Board granted adverse abandonment of an active, shipper-owned line over the rail carrier’s objection, where the line owner seeking the adverse abandonment intended to contract with a non-regulated switching carrier for service post-abandonment, and where the only other shipper on the line did not object. See Paulsboro Refining Co.—Adverse Aban.—in Gloucester Cnty., N.J., AB 1095 (Sub-No. 1), slip op. at 4-6 (STB served Dec. 2, 2014). As the Board explained, the “circumstances at issue” made that case “more analogous” to an adverse discontinuance (i.e., a “landlord/tenant dispute”) than an adverse abandonment. Id. at 5 & n.16. With the exceptions of Paulsboro and the decision vacated by New York Cross Harbor, the Board has otherwise “never granted an adverse abandonment when the carrier was operating over the line.” Seminole Gulf Ry., AB 400 (Sub-No. 4), slip op. at 5.

service.” Seminole Gulf Ry., AB 400 (Sub-No. 4), slip op. at 5.⁸ For example, in Yakima Interurban Lines Association—Adverse Abandonment—in Yakima County, Wash., AB 600, slip op. at 5 (STB served Nov. 19, 2004), an adjacent landowner applied for adverse abandonment of a line that had not “carried traffic in some years” and was in “serious disrepair” due to the failure of the operator. Nonetheless, and notwithstanding the landowner’s “legitimate concerns” about the operator’s mismanagement of the right-of-way, the Board denied the application. Id. at 6. The Board grounded its denial on there being “clear[] potential for continued rail service” based on, among other things, evidence of shipper interest in using the line and local governments’ willingness to fund reactivation of the line. Id. at 5; see also Norfolk S. Ry. 2008, AB 290 (Sub-No. 286), slip op. at 4 (denying adverse abandonment where record showed a “potential for renewed rail operations” based on traffic that could move over the lines and a railroad willing to carry it), aff’d sub nom. City of S. Bend v. STB, 566 F.3d 1166 (D.C. Cir. 2009); Seminole Gulf Ry., AB 400 (Sub-No. 4), slip op. at 5 (carrier presented evidence of “potential new shippers and new uses for the line”).

In considering the potential for rail service, the Board has inquired whether the carrier has “taken reasonable steps to attract traffic.”⁹ Seminole Gulf Ry., AB 400 (Sub-No. 4), slip op. at 5. Such steps include efforts by the carrier to rehabilitate and utilize an inoperable line, see Hartwell First United Methodist Church—Adverse Aban. & Discontinuance—Great Walton R.R., in Hart Cnty., Ga., AB 1242, slip op. at 4-5 (STB served Jan. 31, 2018), or to hold itself out for rail service, see Seminole Gulf Ry., AB 400, Sub-No. 4, slip op. at 5. When considering these efforts—and again, consistent with its statutory duty to preserve and promote rail service—the Board has emphasized that it will not second-guess the carrier’s “judgment about the need for, and usefulness, of” the line. Id. at 5; see also Salt Lake City Corp.—Adverse Aban.—in Salt Lake City, Utah, AB 33 (Sub-No. 183), slip op. at 8 (STB served Mar. 8, 2002) (rejecting argument that carrier could use alternative routes as it “would be inappropriate to substitute our judgment for UP’s business judgment”).

Indeed, since New York Cross Harbor, the Board has only granted an adverse abandonment over the objection of the operating carrier three times.¹⁰ One of those cases was

⁸ Although the rail line in Seminole Gulf was carrying traffic when the case was decided, the only active shipper planned to depart from the line shortly thereafter, and no new shippers had committed to use the line. AB 400 (Sub-No. 4), slip op. at 5.

⁹ The Board notes, however, that 49 U.S.C. § 11101(a), requires a rail carrier to “provide . . . service upon reasonable request,” and the inquiry is not intended to expand that obligation.

¹⁰ The Board has granted a number of adverse abandonment applications where the carrier “do[es] not oppose the requested abandonment” and where “there are no remaining shippers who desire service.” Minn. Com. Ry.—Adverse Discontinuance—in Ramsey Cnty., Minn., AB 882 et al., slip op. at 4 (STB served July 16, 2008); see also Snohomish Cnty.—Adverse Aban.—GNP RLY, Inc., in Snohomish Cnty., Wash., AB 1331, slip op. at 5 (STB served July 11, 2024) (granting adverse abandonment application supported by carrier where record showed that the line was non-viable and no potential shipper expressed interest in using the line); Norfolk S. Ry. 2012, AB 290 (Sub-No. 286), slip op. at 4 (“It is now clear that there are

subsequently vacated,¹¹ and another was the unusual Paulsboro case discussed at supra note 7, which, as the Board explained, was more analogous to an adverse discontinuance than an adverse abandonment. In the remaining case—Denver & Rio Grande Railway Historical Foundation—Adverse Abandonment—in Mineral County, Colo.—the Board granted adverse abandonment of a long-inoperable one-mile line where the applicant had met its burden of demonstrating that there was “no potential for freight service.” AB 1014, slip op. at 13 (STB served May 23, 2008). In reaching this conclusion, the Board thoroughly considered the “prospect of each of the prospective shippers” that the carrier identified, which it by and large rejected as speculative and without supporting evidence.¹² Denver & Rio Grande, AB 1014, slip op. at 7-12.

In Denver & Rio Grande, the Board also found that the carrier had not taken reasonable steps to attract any shippers, as there was “no evidence” to support the carrier’s contention that it had rehabilitated any portion of the line in the many years since it acquired the line through the offer of financial assistance process after Union Pacific sought to abandon the line. Id. at 11-12. Moreover, the carrier represented that it would not “‘beat the bushes’ to attract shippers” until the “necessary rehabilitation work [wa]s complete.” Id. at 11. Consistent with its statutory obligations and the precedent discussed above, it was only after the Board was sure of the “essentially non-existent need to preserve this [one]-mile segment” that it considered whether adverse abandonment would advance the public interest associated with the applicant’s plans to develop the property for non-rail uses. Id. at 17.

The Board’s recent precedent demonstrates that the Board tends to grant adverse abandonment over a carrier’s objection only where a line is inoperable, and the record *strongly* shows a lack of present or future need for rail service and a lack of interest by the rail carrier to restore the line or attract rail business. Once the Board has made a determination that the present or future PC&N require or permit abandonment of a rail line, the Board must then consider the environmental impacts of the proposed abandonment so that the Board may meet its obligations under the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370m-11, and, pursuant to 49 U.S.C. § 10903(b)(2), the Board must ensure that affected rail employees are adequately protected.

no shippers who desire service on the Lines. NSR, the affected carrier, does not object . . . [and] the record indicates that [a different, previously interested carrier] no longer has an interest.”); City of Chi., Ill.—Adverse Aban.—Chi. Terminal R.R. in Chi., Ill., AB 1036, slip op. at 4-5 (STB served June 16, 2010) (granting adverse abandonment where no traffic currently originated, terminated, or bridged over the rail segments, no shippers opposed the proposed abandonment, and the affected rail carrier supported abandonment of the line).

¹¹ See Stewartstown R.R.—Adverse Aban.—in York Cnty., Pa. (Stewartstown 2012), AB 1071 (STB served Nov. 16, 2012), vacated, Stewartstown R.R.—Adverse Aban.—in York Cnty., Pa., AB 1071 (STB served Nov. 14, 2013).

¹² Although later vacated, in Stewartstown 2012, the Board granted adverse abandonment only after reviewing all of the future shipping prospects of each prospective shipper that had been identified, or which submitted a letter of opposition with the Board, and concluding that “there is no present need, and little likelihood of a future need, for rail service on the Line.” Stewartstown 2012, AB 1071, slip op. at 5-10.

In past adverse abandonment cases, when the Board has concluded that the PC&N did not require or permit continued rail operations over a line, the decision removed the line from the Board's jurisdiction, enabling the applicant to pursue other legal remedies to force the carrier off the line. Norfolk S. Ry. 2008, AB 290 (Sub-No. 286), slip op. at 3-4; Consol. Rail Corp., 29 F.3d at 708-09; Modern Handcraft, 363 I.C.C. at 972.

PC&N Analysis

After applying the principles described above and considering the interests involved in this case, the Board finds that, in light of Great Western's efforts to rehabilitate the Line and restore freight rail service, the Landowners have not established that the PC&N require or permit adverse abandonment.

Present or Future Need for Rail Service.

The Landowners cite Denver & Rio Grande, AB 1014; Modern Handcraft, 363 I.C.C. 969; and Chelsea Property Owners—Abandonment—Portion of Consolidated Rail Corp.'s West 30th Street Secondary Track in N.Y.C., 8 I.C.C.2d 773 (1992), aff'd sub nom. Consol. Rail Corp., 29 F.3d 706, for the proposition that adverse abandonment should be granted where the record reflects lengthy nonuse of a line and there is compelling evidence that there will be no need to use that line for rail transportation in the future. (Landowners Appl. 8.) The Landowners argue that the PC&N permit abandonment in this case because the Line has not been used in decades and there is, in the Landowners' view, no realistic potential for future use of the Line. (Id. at 3, 12-15; Landowners Surreply 7-8.) More specifically, the Landowners claim, based on the lack of traffic over the Line, that Great Western has made no efforts to solicit traffic for decades, indicating that shippers are unlikely to materialize. (Landowners Appl. 13, 15.) The Landowners further assert that reinstating rail service will be cost-prohibitive and "close to impossible." (Id. at 15.) They question the adequacy of the repairs planned by Great Western, (Landowners Reply 4 n.8), and argue that the cost of providing service on the Line would outweigh any benefit to Great Western, (see Landowners Appl. 15).

Although the Landowners have shown that the Line has experienced a lengthy period of nonuse, that fact alone does not justify adverse abandonment. Great Western concedes that there are no current freight operations on the Line, that there has been no traffic on the Line in many years, and that the Line is in need of repairs. (Great Western Protest 9-10; see also Landowners Appl., App. 4 Ex. D 1-3, Ex. E 1-3.) However, as explained below, the record also reflects that Great Western seeks to reinstate freight service, has an actionable plan to do so, and has already taken steps toward implementing that plan. In other words, while there is presently no need for rail service, Great Western has committed itself to restoring the Line and attracting rail business. Under these circumstances, there is a reasonable potential for future rail use, and extended nonuse of the Line is not a sufficient reason to remove rail assets from the interstate rail network. See Hartwell First United Methodist Church, AB 1242, slip op. at 6; Norfolk S. Ry. 2008, AB 290 (Sub-No. 286), slip op. at 6-7.

First, the Landowners do not demonstrate that they have any basis, apart from the observed lack of traffic on the Line, to know about potential shipper interest or the extent of any efforts by Great Western to solicit traffic for the Line. Moreover, Great Western has provided evidence that it is actively seeking new traffic for the Line and has communicated with potential new shippers. A verified statement from the President and Chief Executive Officer of G4 Energy, LLC (G4), reflects that as of August 24, 2022, G4 was in active discussions with Great Western about opening a new rail and transloading facility adjacent to the Line that could receive and transload up to one million tons of product annually. (Great Western Reply, V.S. Grossi-Rolfi 1-2; Great Western Protest, Ex. at A-2 to A-3.) Similarly, a verified statement from Walter Sanders, President of Rocky Mountain Transload, Inc. (RMT), shows that as of October 3, 2022, RMT was in discussions with Great Western about opening a transloading facility adjacent to the Line that could ship up to 50,000 tons of product annually. (Great Western Reply, V.S. Sanders 1-2; Great Western Protest, Ex. at A-4 to A-5.) Although they do not contain definitive commitments to ship on the Line, and the record suggests that the negotiations were ultimately not successful (Great Western Mot. to Reject 2, Aug. 27, 2024), these verified statements show that Great Western has a desire to continue operations, and that it has taken reasonable steps to acquire traffic. They also suggest a potential future demand for freight rail service once Great Western's rehabilitation of the Line is complete.

Moreover, although the Landowners claim that these potential shippers lack facilities or any way to access the Line, (see Landowners Surreply 7-8), Great Western's evidence shows that it owns five acres of land adjacent to the Line (Great Western Protest 6-7, 15), and is in negotiations to acquire more land (Great Western Mot. to Reject 2, Aug. 27, 2024), which could be leased to shippers for transloading operations. Great Western's property would provide potential shippers with access to the Line. The record reflects that as of November 18, 2022, Great Western was engaged with multiple potential customers interested in locating rail-centric facilities on that site (Great Western Protest, Ex., V.S. Sabatini at A-7), and was in the process of negotiating a letter of intent to lease the site for use as a transloading facility (Great Western Protest 15; id., Ex. at 18-21).

Although the Landowners argue that reinstating rail service will be cost-prohibitive, (Landowners Appl. 15), the record reflects that Great Western has already made substantial investments in, and made progress toward, repairing the Line. (See Great Western Reply, V.S. Vallos; Great Western Protest, Ex., V.S. Sabatini; Great Western Env't Comment, Ex.) Great Western states that it spent approximately \$1.5 million from 2022 to 2024 to repair and maintain the Line. (Great Western Mot. to Reject 2, Aug. 27, 2024.) In addition, the President and Chief Operating Officer of Great Western's parent company, OmniTRAX, Inc., explains that as of November 15, 2022, the railroad had already replaced 4,000 crossties, and had plans to install 4,500 tons of ballast, surface 31,680 feet of track and make associated drainage repairs, replace 184 feet of track at a grade crossing, make repairs to one turnout, and replace approximately 4,840 feet of rail. (Great Western Protest, Ex., V.S. Sabatini at A-6.) Great Western's January 17, 2023 environmental comments indicate that it has installed 800 tons of ballast, started restoring right-of-way drainage, and received delivery of approximately 5,000 feet of rail, and that it intended to complete the repairs and begin service on the Line in early 2023. (Great Western Env't Comment 8-9.) Although service has not yet been reinstituted, Great Western states that it has continued to upgrade and maintain the Line. (Great Western Mot. to Reject 2,

Aug. 27, 2024.) Moreover, the Landowners provide no evidence to support their assertions that Great Western's repair projects will ultimately be unsuccessful or are not genuine efforts to reinstate freight service.¹³ And the Landowners do not claim to have the qualifications to assess the cost and feasibility of rail line repairs, nor do they submit evidence from an expert. Great Western's documented investment and efforts, along with its progress in making repairs, thus rebut the Landowners' claims against the Line's viability.

Finally, the Landowners provide no supporting evidence for their claim that the cost of providing service on the Line would outweigh any benefit to Great Western. (See Landowners Appl. 15.) The Board recognizes suggestions in the record that serious efforts to rehabilitate the Line and reinstitute freight rail service started only after the Landowners gave notice that they intended to seek adverse abandonment, (see Landowners Appl. 14; Great Western Protest 8-9), and that substantial repairs are needed before freight rail service can resume on the Line, (see Great Western Protest 9-10). However, Great Western states that the Line has direct access to both Union Pacific Railroad Company and BNSF Railway Company, (Great Western Reply 7), a configuration that generally supports viability for a short line railroad. The record also indicates that OmniTRAX, Inc. is involved in scoping and overseeing the necessary repairs, which suggests support for the investment within the corporate structure. (Great Western Reply, V.S. Vallos; Great Western Protest, Ex., V.S. Sabatini.) Thus, the Landowners have not shown that reactivation of the Line is economically infeasible, particularly in light of Great Western's demonstrated willingness to invest in the Line.

In sum, the Landowners' arguments about lack of potential shipper interest and access to the Line, and the cost-prohibitive and inadequate nature of the planned repairs, are unsupported. The Landowners have not met their burden because, unlike the applicants in the cases they cite, the Landowners have not adequately supported their assertions that there is no potential for future use of the Line. On the other hand, Great Western has demonstrated a genuine desire to continue service and has taken reasonable steps to acquire traffic.¹⁴

¹³ The only evidence the Landowners provide in support of their claims are the sworn statements of two of the 27 Landowners, and a May 24, 2024, letter from the Town. The sworn statements speak only to the lack of freight rail service on the Line, which is not disputed here. (Landowners Appl., Apps. 6 & 7 (describing the railroad activity these landowners have observed on their property, with photographs of the Line from 2015 and 2022).) The Town's letter also asserts that the Line is not yet back in use and cites complaints from residents about the condition of one of the Line's grade crossings. (Landowners Letter, Ex. at 1-2, June 4, 2024.) Repairs to this grade crossing were being managed by the Colorado Department of Transportation (CDOT). (Great Western Reply, V.S. Vallos 2; Great Western Protest, Ex., V.S. Sabatini at A-7.) However, as noted below, these repairs were halted due to this adverse abandonment proceeding. (Great Western Mot. to Reject 1-2, Aug. 27, 2024.)

¹⁴ Cf. Denver & Rio Grande, AB 1014, slip op. at 11 (finding that the evidence supported only the possibility of one potential shipper, which would ship only one to three carloads per year); Modern Handcraft, 363 I.C.C. at 969-71 (finding that the line had been turned into a parking lot and was generating revenue solely from billboard rentals and parking lot licenses); and Chelsea Prop. Owners, 8 I.C.C.2d at 781-82, 789, 791 (finding that the only

Other Interests.

As noted, in assessing an adverse abandonment request, the Board considers not only at the present or future interest in rail service, but also other interests that may be implicated, including those of the landowners, the larger community, and the interstate rail network at large. E.g., N.Y. Cross Harbor R.R., 374 F.3d at 1180. In doing so, the Board is mindful of Congress' intent (as expressed in many statutory provisions) that lines be kept within the rail system where possible, and of the possibility of the Line once again supporting rail service to the shipping public. Norfolk S. Ry. 2008, AB 290 (Sub-No. 286), slip op. at 5-6; see also N.Y. Cross Harbor R.R., 374 F.3d at 1188 (criticizing Board for failing to adequately account for "abandonment's impact on rail service or on interstate commerce generally"). Here, despite general contentions that the public interest supports abandonment of the Line, Landowners fail to establish that such interests support removing the Line from the Board's jurisdiction.

The Landowners contend that the condition of the Line is dangerous¹⁵ and that the area has changed from a primarily agricultural area to a primarily residential development. (Landowners Appl. 13, 16.) They argue that abandonment would benefit the public by allowing the Landowners to get their land back, (Landowners Appl. 16 n.13), and put it to "productive use" by, for example, allowing farm equipment to cross the right-of-way without incurring damage. (Landowners Reply 3 n.7.) The Landowners also claim that the right-of-way between Johnstown High School and Interstate 25 is "targeted for commercial and residential development." (Id.) In addition, the Town states that Great Western has not maintained the Line in the past, and that it receives frequent complaints about the condition of a highway grade crossing on the Line. (Landowners Req. to File Letter, Ex. at 1, June 4, 2024.) The Town also argues that the Line is not currently being used for the economic benefit of the community and is not likely to benefit the community in the future because the Town has seen no evidence of prospective shippers. (Id. at 1-2.) The letters from the Town reflect that the Town explored, without success, the possibility of railbanking the Line under the Trails Act and establishing a bike and pedestrian trail. (Town Letter 2, Aug. 18, 2022; Landowners Req. to File Letter, Ex. at 2, June 4, 2024.)

The Landowners' claims that abandonment of the Line would promote the public interest are vague and unsupported. They provide no evidence of any planned commercial and residential development. To the contrary, Great Western indicates that the Line traverses mainly rural farmlands, and that restoring freight rail service on the Line is important to the local rural economy. (Great Western Reply 14; Great Western Protest 7-8.) Moreover, the Town's letters do not identify any current plans for municipal or public use of the Line, and the Landowners state that they are opposed to trail use and the imposition of 49 U.S.C. § 10905 public use

potential shipper sought to withdraw, suitable real estate was owned by parties unwilling to sell, line owner showed no progress to reinstate service, and reinstatement proposal was not economically feasible).

¹⁵ One landowner states that the tracks are dangerous to children and cattle, citing concerns about calves getting caught in the rails while grazing. (Landowners Appl., App. 7 para. 11.)

provisions. (Landowners Appl 16-18.) With regard to the highway grade-crossing issues, Great Western states that CDOT planned to replace the grade crossing in question, but the project was canceled due to this pending adverse abandonment proceeding. (Great Western Mot. to Reject 2, Aug. 27, 2024.) Great Western adds that it will work with CDOT and the Town to repair the crossing after this proceeding concludes. (*Id.*) Overall, on this record, the Landowners' claims are insufficient to justify removing the Line from the interstate rail network against the carrier's will.

In conclusion, because the record reflects a potential for future use of the Line due to Great Western's demonstrated interest in continued rail service, and its efforts to rehabilitate the Line, the interests described by the Landowners do not justify removing it from the interstate rail network. See *City of S. Bend*, 566 F.3d at 1170-71; *N.Y. Cross Harbor R.R.*, 374 F.3d at 1180; *Yakima Interurban Lines Ass'n*, AB 600, slip op. at 5-6. Rather, denial of the proposed abandonment will be consistent with the Board's duty to preserve and promote continued rail service. See *City of S. Bend*, 566 F.3d at 1168; *N.Y. Cross Harbor R.R.*, 374 F.3d at 1187.

Questions Not Reached

Great Western argues for the first time in its August 27, 2024 submission that the Board lacks authority to grant applications for abandonment filed by parties other than the owner of the Line. (Great Western Mot. to Reject 2-3, Aug. 27, 2024.) It reiterates this argument in its May 13, 2025 letter in response to Landowners' request for expedited consideration. (Great Western Response to Request to Expedite 3, May 13, 2025.) However, it is not necessary to reach this issue here because the Board will deny the Landowners' application. For the same reasons, this decision does not address the Landowners' requests for waiver of the trail use provision at 49 C.F.R. § 1152.29, exemption from the offer of financial assistance provisions in 49 U.S.C. § 10904, and exemption from the public use provisions in 49 U.S.C. § 10905.

It is ordered:

1. The Landowners' request for permission to file a surreply to Great Western's October 14, 2022 reply is granted, and the filing is accepted into the record.
2. The Landowners' October 20, 2022 filing is accepted into the record.
3. Great Western's Aug. 27, 2024 motion to reject the Landowner's June 4, 2024 filing is denied.
4. The application for adverse abandonment is denied.
5. This decision is effective on its service date.

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