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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP 778

**PETITION FOR RULEMAKING TO AMEND REGULATIONS ON PROSPECTIVE
USE OF RIGHTS-OF-WAY FOR INTERIM TRAIL USE AND RAILBANKING**

**COMMENTS OF
THE ASSOCIATION OF AMERICAN RAILROADS**

The Association of American Railroads (“AAR”) submits these comments on behalf of its members in response to the August 11, 2025 Petition (“Petition”) filed by the National Association of Reversionary Property Owners (“NARPO”), requesting that the Surface Transportation Board (“STB” or “Board”) open a rulemaking proceeding to consider potential amendments to the Board’s regulations regarding the interim use of railroad rights-of-way for trail use. The Petition suggests amendments to the Board’s regulations that would require a railroad proposing to abandon a railroad right-of-way and/or the interim trail sponsor to “notify by registered mail all property owners abutting the soon-to-be abandoned right-of-way and inform the abutting property owners of the possibility of an interim trail on the railroad right-of-way.” Petition at 11. The proposed changes would apply to both the abandonment application and exemption proceedings.

AAR opposes the proposal and does not believe that such a rulemaking is necessary or advisable. Adoption of the proposed rules would, as the agency has found in the past, be unduly burdensome and would create a disincentive for utilizing rights-of-way as trails in direct contravention of the stated purpose of the National Trails System Act Amendments of 1983 (“Trails Act”).

COMMENTS

I. The Proposal is Unnecessarily Burdensome.

The Board should reject the Petition on the grounds that the agency has stated in the past that the proposed requirements are unnecessarily burdensome on the railroads and/or trail sponsors.¹ When adopting the original Trails Act rules in 1986, several commenters expressed a desire for more notice of the possible use of railroad right-of-way as a trail, but the ICC noted that “[f]ar reaching notice requirements already exist.”² In adopting its final rule, the ICC was concerned about creating additional burdens on the railroads and implementing the then-newly passed legislation in a less burdensome manner.³

In 2011, the Board held a hearing on the Trails Act and the Board’s processes related thereto. There, NARPO proposed the same rule changes as the instant Petition.⁴ In rejecting NARPO’s proposal, the Board explained:

When a rail carrier intends to abandon a line, it must provide notice to appropriate federal, state and local agencies, government entities, and local communities. 49 C.F.R. §§ 1152.20(a)(2), 1152.50(d), and 1152.60(d); *see also* 49 C.F.R. § 1105.7(b). In every abandonment case where an exemption from the requirements of 49 U.S.C. § 10903 is sought under 49 U.S.C. § 10502, the railroad must certify

¹ See Petition at 2 (“When the ICC issued the original rules for 16 USC 1247(d) and 49 CFR § 1152.29 in 1986, *see* 2 ICC 591, 600 (1986), the ICC declared that it was unduly burdensome for the railroad and/or proposed trail entity to notify the property owner who owned property along the soon-to-be-abandoned railroad line. Even though NARPO and other commenters brought the reversionary property owners’ issue to the forefront in the 1986 rulemaking, the ICC sided with the railroad’s ‘too burdensome’ position as the basis not to notify the abutting property owners of their Fifth Amendment due process rights.”).

² *Rail Abandonments—Use of Rights-of-Way as Trails (49 C.F.R. Parts 1105 and 1152)*, 2 ICC 2d 591, 1986 ICC LEXIS 339, *30 (ICC served April 16, 1986).

³ The ICC expressed throughout its decision the importance of reducing burdens on railroads, *See, e.g., id* at 29 (“The statute requires expeditious consideration of abandonment applications in order to relieve carriers of burdensome operations and to relieve interstate commerce of the concomitant burdens.”), 34 (“Since we have concluded that interim trail use agreements must be voluntarily entered into by railroads, we believe that we should minimize our role in the agreement process and, in turn, minimize regulatory burdens.”), 36 (“The burden on the railroad of including the additional information in its notice will be minimal.”).

⁴ *See Nat’l Trails System Act & R.R. Rights-of-Way*, EP 702, at 7 (STB served Feb. 16, 2011); (“NARPO asserts that due process requires that direct notice via mail be given to adjoining landowners at the time that a CITU or NITU is issued, because the courts have found that the 6-year statute of limitations for bringing a compensation claim under the Tucker Act, 28 U.S.C. § 2501, begins to run at that time.”).

that it has published in a newspaper of general circulation in each county through which the line passes a notice that alerts the public to the proposed abandonment, to available reuse alternatives including the Trails Act, and to how it may participate in the Board proceeding. 49 C.F.R. § 1105.12. Federal Register notice also is provided in every abandonment case. 49 C.F.R. §§ 1152.22(i), 1152.50(d)(3), 1152.60(c).⁵

It then found that NARPO's proposal would be time-consuming, burdensome, and unnecessary. The Board should again reiterate that finding.

When the Board last considered amending its rules regarding the use of railroad rights-of-way as trails, it again rejected the same request from NARPO. Specifically, in 2019, the Board considered NARPO's proposed changes: "NARPO asks the Board to further consider NARPO's request to require rail carriers to provide 'due process notice' to property owners. . . . As stated in the *NPR*, the Board, and its predecessor, the ICC, have repeatedly considered similar notice proposals by NARPO and declined to adopt such a rule."⁶ The Board found, as it did in 2011, that adopting a rule requiring NARPO's preferred form of notice would be time-consuming, unnecessary, and burdensome.⁷ The Board even explained that "[a] requirement that a rail carrier or trail sponsor identify, locate, and notify all adjacent landowners would be time-consuming and burdensome, *even if electronic property records for each parcel located adjacent to the railroad right-of-way are available*. Such a burdensome process could result in confusion

⁵ *Id.*

⁶ *Limiting Extensions of Trail Use Negotiating Periods and Rails-to-Trails Conservancy—Petition for Rulemaking*, EP 749 (Sub-No. 1); EP 753, at 9 (Dec. 4, 2019).

⁷ *Limiting Extensions of Trail Use Negotiating Periods and Rails-to-Trails Conservancy—Petition for Rulemaking*, EP 749 (Sub-No. 1); EP 753, at 6 (Oct. 2, 2018).

and significant delay.”⁸ Nothing has changed to require the Board to revisit these findings. Indeed, the same issues remain and would be consistent with prior agency findings.⁹

As it has done before, NARPO claims that any burden on the railroad is minimized by the fact that “[p]ractically every county in the United States now has its property records on local county computers. A trail use proponent can now easily search the county records, or have a title company do so, to obtain the names and addresses of all adjoining landowners to a proposed abandonment.”¹⁰ This is simply untrue. AAR’s members operate in nearly every state and in all types of counties and jurisdictions – urban, rural, suburban – and local recordkeeping is varied at best. In the experience of AAR’s members, many smaller jurisdictions do not have easily searchable or identifiable property records, nor do they identify whether property owners have reversionary rights to railroad rights-of-way. As was the case previously, NARPO does not support its claims that electronic property records are widely available. As such, the burdensome nature of the Petition should be reaffirmed, and the Board should decline to open a proceeding in this matter.

NARPO also does not explain how the purported benefit of its proposed notice requirement would outweigh these burdens. Although NARPO contends that notice is required to prevent potential expiration of the six-year statute of limitations period for takings claims, it does not provide any examples where the statutory period actually expired due to lack of notice.¹¹ Indeed, in AAR members’ experience, landowners’ counsel in Tucker Act litigation

⁸ *Id.* at 6 (emphasis added).

⁹ See *Nat’l Ass’n of Reversionary Prop. Owners v. STB*, 158 F.3d 135 (D.C. Cir. 1998); *Nat’l Trails System Act & R.R. Rights-of-Way*, EP 702, at 7-8 (STB served Feb. 16, 2011); *Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures*, EP 274 (Sub-No. 13) (ICC served July 28, 1994).

¹⁰ Petition at 3.

¹¹ Although NARPO cites *Caldwell*, that opinion only held that the issuance of a NITU (rather than the execution of a trail agreement) triggers the six-year limitation period; it did not address notice. NARPO’s reference

already typically provides notice to adjoining landowners when NITUs are filed with the Board. In short, NARPO's proposal seeking an additional burdensome layer of notice appears to be a solution in search of a problem.

II. The Proposal Contravenes the Administration's Deregulatory Posture.

Ignored by the Petition is the basic fact that the current Administration is focused on deregulatory efforts, not ones that expand regulatory burdens and increase costs. For example, on February 19, 2025, President Trump signed an Executive Order directing agency heads to, among other things, identify regulations that:

- (v) regulations that *impose significant costs upon private parties* that are not outweighed by public benefits; [and]...
- (vii) regulations that *impose undue burdens* on small business and impede private enterprise and entrepreneurship.¹²

The Petition would violate the spirit of this executive order by imposing costs on private parties, like certain railroads and trail sponsors, that do not outweigh the benefits – indeed, NARPO has not claimed any lost opportunity to exercise reversionary property owners' rights.¹³

to *CSX Transportation, Inc. --Abandonment -- between Delphi and Frankfort, IN*, AB-55 (Sub-No. 401) (STB served Sept. 24, 2012), is similarly misplaced. That decision merely modified an existing Section 106 historic preservation condition and did not address the issuance of a NITU in the first instance. Accordingly, that decision does not suggest that any adjacent landowners were time-barred from bringing any applicable just compensation claims in Tucker Act proceedings.

¹² Exec. Order 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, at § 2 (Feb. 19, 2025) (emphasis added).

¹³ NARPO cites a 1991 abandonment application proceeding that involved the conveyance of a rail line for trails use 20 years later to claim the property owners adjacent did not receive notice. *See* Petition at 3-4. NARPO does not however allege that proper notice under the rules were not followed in 1991. Indeed, there is no indication all the regulatory notice requirements were not followed. If the passage of time is the root of the concern, the Board has addressed that matter. In 2012, the Board required that the parties negotiating for a trail use agreement notify the Board within 10 days that the agreement was reached and the exact location of the right-of-way, such notices are publicly available on the Board's website. *See National Trails System Act and Railroad Rights-of-Way*, EP 702 (May 2, 2012). In 2019, the Board changed its rules to make the CITU or NITU initial term one year, with up to three one-year extensions thereafter, and one additional year beyond that for extraordinary circumstances. *See Limiting Extensions of Trail Use Negotiating Periods and Rails-to-Trails Conservancy—Petition for Rulemaking*, EP 749 (Sub-No. 1); EP 753 (Dec. 4, 2019).

Additionally, the Administration set goals of new regulations being offset by the elimination of existing regulatory costs, by a ratio of 10:1.¹⁴ Granting the Petition would not align with the Administration's policy "to significantly reduce the private expenditures required to comply with Federal regulations."¹⁵ It would do the opposite. The Board should reject the Petition.

CONCLUSION

For the reasons stated above, AAR opposes the Petition. The Board should reject the Petition as unduly burdensome, as the agency has in the past. Doing so would align the agency with the deregulatory goals of the current Administration.

Respectfully Submitted,



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¹⁴ See Exec. Order 14192, *Unleashing Prosperity Through Deregulation*, § 3(c) (Jan. 31, 2025) ("any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations").

¹⁵ *Id.* at § 1.