

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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STB Docket No. AB- 346X

BAD WATER LINE - ABANDONMENT EXEMPTION IN FREMONT COUNTY, WY

REPLY AND OPPOSITION OF RAILS TO TRAILS CONSERVANCY TO PETITION TO
REOPEN FILED BY TWO LANDOWNERS

Introduction

The Rails to Trails Conservancy (“RTC”) hereby files this reply and opposition to the petition to reopen filed by two adjacent landowners, seeking to revoke the Notice of Interim Trail Use (“NITU”) issued to Fremont County, Wyoming in 1991. The NITU that the Petitioners seek to revoke authorized interim trail use/railbanking negotiations for a 22.5-mile rail line, from Railroad Avenue at South 3rd Street in Riverton to East 1st Street near US 26/20/East in Shoshoni. An interim trail use/railbanking agreement was executed by the railroad and Fremont County on May 10, 1991. *See* Petition to Reopen, Exhibits A and B.

RTC is a national nonprofit organization with some 105,007 active members nationwide, including 7,490 members, subscribers and supporters in the state of Wyoming. RTC is dedicated to preserving otherwise to-be-abandoned rail corridors for possible future rail reactivation ("railbanking") and for other compatible interim public uses, including use as trails. The Wyoming Heritage Trail, which is the subject of this petition to reopen, is an established railbanked rail-trail in Fremont County, serving walkers, mountain bikes, horseback riders for more than 30 years. While railbanked corridors are common across the United States, it is

uncommon in Wyoming. The Wyoming Heritage Trail will link to the Great American Rail Trail, a planned cross-country multiuse trail, stretching more than 3,700 miles between Washington, D.C., and Washington State, which is a major initiative of the Rails to Trails Conservancy.

<https://www.railstotrails.org/site/greatamericanrailtrail/> For the reasons set forth below, RTC believes that the petition to reopen is wholly without merit.

Discussion

The STB regulations provide that a petition to reopen an administratively final decision must be based on a claim that “the proceeding involves material error, new evidence, or substantially changed circumstances. . . .” 49 C.F.R. § 1115.4. This Board approaches petitions to reopen “cautiously, on a case-by-case basis, striving to achieve an appropriate balance between the interests of fairness to all parties and of administrative finality and repose.” *Arizona Pub. Serv. Co. v. Atchison, T. & S.F. Ry. Co.*, 3 S.T.B. 70, 75 (1998) (Arizona II); *see also Arizona Public Service Co., et al. v. The BNSF Ry. Co.*, 6 S.T.B. 851, 855-57 (2003).

I. Petitioners’ Make No Credible Claim of “Changed Circumstances” Or “New Evidence” Warranting Reopening this Abandonment Proceeding More Than 30 Years After Issuance of the NITU.

Petitioners are two families – the Herbst and Stetler families – who purchased land adjacent to the Wyoming Heritage Trail in 2017 and 2021, respectively. Petitioners allege that the County’s assessment of an ad valorem tax on the Railroad Right of Way violates the Trails Act, 16 U.S.C.1247(d). Petition to Reopen, at 7. As Petitioners acknowledge, the challenged ad valorem tax has been assessed on the corridor since the NITU was issued and railbanking agreement was executed over 30 years ago.

The Petitioners seek to excuse their tardiness by claiming that they were “unaware” of the interim trail use/railbanking agreement executed in 1991 by Fremont County. Petition to

Reopen, at 5. They assert that they “discovered” that that Fremont County claimed a right-of-way easement for interim trail use/future railbanking, though communications with the County Attorney in September 2023. Petition to Reopen, at 5. They then claim that this “discovery” in 2023 constitutes “new evidence” and “changed circumstances” allowing them to challenge the NITU and railbanking agreement on the grounds that the NITU is a “taking” and violates the Trails Act. *Id.* at 7.

However, there is nothing new about the County’s assessment of ad valorem taxes on Petitioners, which Petitioners acknowledge have been assessed on their property for four and nine years, respectively, and presumably, on the property of their predecessors in title at all relevant times since the 1991 NITU was issued. Even assuming that the tax had been unlawfully assessed – a claim that the County disputes -- they provide no explanation for why they waited four and nine years, respectively, before appealing the tax assessments. This Board is well justified in refusing to reopen a proceeding “where there is evidence a petitioner slept on her rights.” *Jost v. STB*, 194 F.3d 79, 85 n. 10 (D.C. Cir. 1999).

Moreover, the Petitioners lack of “awareness” of the ICC’s 1991 order is not credible, nor does it provide any legitimate justification for the tardiness of this petition to reopen. As the Petitioners acknowledge, there was fencing on both sides of the corridor, clearly demarking the County’s property. The existence, length, route, and end points of the Heritage trail are easily verified by numerous public websites, and by the ongoing actual use of the trail. Moreover, as this Board has repeatedly ruled, “publication in the Federal Register [of notice of abandonment] is legally sufficient notice of an agency action to all interested or affected persons, regardless of actual knowledge or hardship resulting from ignorance.” *See National Association of Reversionary Property Owners – Petition for Rulemaking – EP 778*, at 4 (STB served Feb. 24,

2026) (rejecting argument that adjoining landowners were entitled to individual notice of the issuance of trail use orders); *Nat'l Ass'n of Reversionary Prop. Owners v. ICC*, 70 F.3d 638 (D.C. Cir. 1995) Reopening this proceeding at this late date, where there is no legitimate justification for the delay in raising these issues, would be contrary to basic principles of administrative finality and repose.

Accordingly, absent new evidence or changed circumstances, any objections to the 1991 order should have been raised within 60 days of the issuance of the NITU, as required by the federal Hobbs Act, 28 U.S.C. §2321, 2344. This is the exclusive means by which ICC orders may be challenged. *See Interstate Commerce Commission v. Brotherhood of Locomotive Engineers*, 482 U.S. 270 (1987). *See also Glosemeyer v. Missouri-Kansas-Texas RR*, 879 F.2d 316 (8th Cir. 1989), *cert. denied*, 494 U.S. 1003 (1990). No challenge was filed within the statutory time period.

II. This Board Lacks Jurisdiction Over Petitioners' "Takings" Argument and Property Dispute.

This Board has no jurisdiction over Petitioners' argument that a "taking" occurred because Fremont County failed to provide a refund of the ad valorem taxes. This Board has no legal authority over Fremont County, and it cannot provide any relief to Petitioners for their belief that Fremont County's improperly assessed ad valorem taxes. Petitioners are free to appeal the denial of a refund of taxes paid in an appropriate state court venue. If Petitioners believe that the County's refusal to refund taxes amounts to a "taking" of their property without just compensation, they are free to advance their "takings" claim against the County in a separate action, assuming they exhaust all available remedies under state law. *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) (a Fifth Amendment "takings" claim is not ripe for federal court review until a property owner has sought

and been denied just compensation through all available state-level administrative and judicial procedures.)

Further, this Board is not the proper venue for adjudicating Petitioners' belief that "[a]ssessing taxes in violation of 16 USCS § 1247, the Interim Rail Banking Agreement, and the ICC decisions in docket AB-346X. violated the Stetler Family's Fifth Amendment Rights. Petition to Reopen, at 6. As the Supreme Court held in *Preseault v. ICC*, 494 U.S. 1 (1990), if Petitioners feel that the issuance of a railbanking order amounts to a "taking," then the proper approach is for them to file a claim in the U.S. Court of Federal Claims against the United States under the Tucker Act, 28 U.S.C. § 1491, or in the U.S. District Court for claims under \$10,000. 28 U.S.C. § 1346(a)(2).

In any event, the allegedly wrongful assessment of ad valorem taxes on Petitioners is irrelevant to the claim that the County has met its responsibilities under the Trails Act, 16 USCS § 1247. The Act's implementing regulations require a potential trail manager to file a statement indicating its "willingness to assume full responsibility for: . . . the payment of *any* and all taxes that may be levied or assessed against the right-of-way." 49 C.F.R. § 1152.29(a)(2) (emphasis added). Presumably, Fremont County does not owe "any" taxes to itself for its ownership of the recreational trail easement. This regulation has never been construed to require a governmental trail manager to pay taxes where none are owed. *See, e.g. Wheeler v. Material Recovery of Erie Inc.*, 398 F. App'x 786, 793 (3d Cir. 2010) (affirming the Board's conclusion that trail sponsor's single tax delinquency does not demonstrate "that the trail sponsor had not met its financial obligations pertaining to the Trail.")

Likewise, the Petitioners vaguely allude to a property dispute, asserting that “the fence's location is also in question.” *Petition to Reopen*, at 6. Petitioners provide absolutely no support for this vague claim. But in any event, routine property disputes over boundaries are “the type of determination the state court can appropriately address.” *Jie Ao and Xin Zhou – Petition for Declaratory Order*,. Docket No. FD 35539, at 8 (STB served June 6, 2012); *Allegheny Valley R.R.—Petition for Declaratory Order—William Fiore*, FD 35388 (STB served Apr. 25, 2011). These issues are irrelevant to the validity of the 1991 NITU and do not provide any “new evidence” warranting reopening that proceeding.

III. Petitioners’ Unfounded Allegations That Fremont County Has Failed to Maintain Trail Does Not Constitute Material New Evidence And Does Not Provide A Basis for Challenging the NITU.

Finally, there is no merit to Petitioners unsupported claim that Fremont Count has failed to maintain the Heritage Trail “at all until putting in new fences in 2023.” *Petition to Reopen*, at 6. Publicly available information indicates that the Wyoming Heritage Trail is partially paved, from the trailhead in Riverton to the outskirts of the town, and that the remainder of the trail is a gravel surface, and used for walking, mountain biking, horseback riding, snow-mobiles, and all-terrain vehicles. <https://www.traillink.com/trail/wyoming-heritage-trail/>
<https://windriver.org/experience/rails-to-trails/>

More importantly, this Board has made clear that the Trails Act and its implementing federal regulatory scheme does not address the specifics of the operation of a rail-trail, including the maintenance responsibilities of the trail manager. *See Idaho N. & Pac. R.R.—Abandonment & Discontinuance Exemption—In Washington & Adams Counties, ID*, STB Docket No. AB-433 (Sub-No. 2X) , 3 S.T.B. 50, 59 (1998). The Courts have held that “the Trails Act does not require a trail to be ‘developed’ in any particular way.”. *Jost v. STB*, 194 F.3d at 90.. *see also Jost*

v. STB, 194 F.3d at 89. *See also Wheeler—Pet. for Declaratory Ord.—Rail Line in Erie Cnty., Pa.*, Docket No. FD 35082, at 9–10 (STB served Aug. 27, 2008), *aff’d sub nom., Wheeler v. Material Recovery of Erie Inc.*, 398 F. App’x 786 (3d Cir. 2010).

Conclusion

For the foregoing reasons, the petition to reopen should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March, 2026, a copy of the foregoing RTC Reply to Petition to Reopen This Proceeding was served by email upon all parties of record in this proceeding.

/s/ Andrea Ferster
Andrea Ferster