

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
March 18, 2026
Part of
Public Record

Docket No. AB-346X

FREMONT COUNTY WYOMING
-DECISION AND NOTICE OF INTERIM TRAIL USE-
BAD WATER LINE

**PETITIONERS' OBJECTION TO REPLY AND OPPOSITION OF RAILS TO
TRAILS CONSERVANCY TO PETITION TO REOPEN FILED BY TWO
LANDOWNERS**

PETITIONER:

JAKE Z. STETLER AND KARLINE Z. STETLER,
HUSBAND AND WIFE

PETITIONER:

THOMAS L. HERBST AND MICHELLE E. HERBST,
INDIVIDUALLY AND AS TRUSTEES OF THE
EPIC LEGACY LIVING TRUST DATED SEPTEMBER 5, 2025

C/O

MARSHALL E. KELLER WYO BAR #7-6406

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The Petitioners, Jacob Z. Stetler and Karline Z. Stetler, husband and wife (“Stetler Family”), individually, and Thomas L. Herbst and Michele E. Herbst, husband and wife (“Herbst Family”), individually and as Trustees of the Epic Legacy Living Trust dated September 5, 2025, in the above-entitled matter and hereby file *Petitioners Objection to Reply and Opposition of Rails to Trails Conservancy (“RTC”) to Petition to Reopen Filed by Two Landowners* (“Petitioners Objection”).

PROCEDURAL HISTORY/BACKGROUND

1. On February 11, 2026, Petitioners filed their *Petition to Reopen* (“Petition”), docket no. AB-346X before the Surface Transportation Board.
2. Through said Petition, Petitioners seek to reopen docket number AB-346X for the purpose of either revoking the Notice of Interim Trail Use (“NITU”) issued to Fremont County, Wyoming in 1991 or to enforce the conditions of the NITU and the interim trail use/railbanking agreement executed in May 1991 and 16 USC 1247(d).
3. On March 3, 2026, RTC filed its *Reply and Opposition of Rails to Trails Conservancy to Petition to Reopen Filed by Two Landowners* (“Reply and Opposition”)

OBJECTION

- I. RTC's unauthorized participation, without petition, party status, or standing, is improperly disruptive to the orderly conduct of this proceeding and warrants striking its filings.

RTC is neither a named party nor an admitted intervenor, and RTC has not sought leave to participate as a party in this proceeding. Under 5 USCS § 555(b), “[s]o far as the orderly conduct of public business permits, an interested person may appear before an agency” in any form of agency proceeding. *Id.*; *Animal Legal Def. Fund, Inc. v. Vilsack*, 237 F. Supp. 3d 15, 21 (D.D.C. 2017). However, such participation is not without limits. The statute conditions third-party appearances on “due regard for the convenience and necessity of the parties” and requires that “within a reasonable time, each agency shall proceed to conclude a matter presented to it.” *Id.* Thus, the APA does not grant an unfettered right to participate but leaves the scope and manner of appearance to the agency’s broad discretion, considering efficiency and fairness concerns. *Id.* at 22.

Although the APA does not clarify what it means to “appear” before an agency, nor does the APA define “interested person,” courts have provided guidance. In *Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994 (D.C.Cir.1966), the court held that a nonparty may intervene as a party if a person has standing to appeal the decision of the agency. While some authorities suggest that limited participation may be appropriate even without full appellate standing, such participation must still serve the orderly resolution of the proceedings. 5 USCS § 555(b); *Animal Legal Def. Fund, Inc.* 237 F.Supp. 3d at 21. Agencies have broad discretion to limit the participation of interested parties and public interest organizations. *Id.* (citing *Nichols v. Bd. of Trustees of Asbestos Workers Local 24 Pension Plan*, 835 F.2d 881, 897 U.S. App. D.C. 304 (D.C. Cir. 1987).

The basic test for standing under federal law requires that the subject party demonstrate an injury in fact, caused or about to be caused by the challenged action, and that a favorable decision provides a remedy for that injury. *Lujan v. Defenders of Wildlife* 504 U.S. 555 (1992). The injury claimed must be concrete and particularized. *Id.* The alleged injury must be more than a generalized grievance shared by the public at large. *Id.*

Further, an organization or public interest group may assert representational standing on behalf of its members only if one of its members would have standing to bring the action in his own right, the lawsuit relates to the purposes of the organization, and neither the asserted claim nor the requested relief requires the participation of the individual members. *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975).

RTC fails to meet the requirements for standing and also threatens to introduce unnecessary complications to the considerations of this proceeding. Its asserted interest in this proceeding is generalized and speculative. Though RTC claims to have members and subscribers in the state of Wyoming, RTC does not identify whether any member uses the subject rail trail, or, accordingly, who would suffer a concrete and particularized injury if STB grants the relief requested by Petitioners if the STB reopened the Petition. Nor have they proven that the Petition to Reopen would result in the termination of the railroad right-of-way and the current trail. Instead, RTC relies on a hypothetical future harm, asserting that the subject trail “*will link to the Great American Rail Trail, a planned cross-county multiuse trail[.]*” (emphasis added). RTC further alleges the portion of the trail through the Stetler Family parcel and the Herbst Family parcel “serving hiker, mountain bikers, and horseback riders for more than 30 years.” When in fact the railway corridor is primarily used by 4-wheel vehicles and ATV traffic, not for the intended use of “Great American Rail Trail”. *Newberry v. Bd. of Cty. Comm'rs*, 919 P.2d 141 (Wyo. 1996)(Finding the County of Fremont was not liable for the injuries caused to Newberry, who was injured when his van fell off the train trestle.)

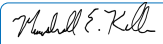
This alleged injury is neither current nor imminent, but contingent on a series of indefinite future events, specifically the development of a preferred route for a proposed trail that does not yet exist and the ultimate termination of the railroad right-of-way. RTC does not declare that the environmental, aesthetic, or recreational interests of its members are at stake here and accordingly does not meet the second or third elements of standing either. Further, considerations of a preferred route for a “planned trail” threatened to obstruct or overburden the proceedings and do not promote the orderly conduct of business in this matter.

Consistent with the concept of agency discretion, specific procedures governing intervention in proceedings before the Surface Transportation Board (“STB”) have been established. So, RTC’s right to intervene must be governed by the STB’s promulgated rules for third-party intervention. See *Animal Legal Def. Fund, Inc.*, 237 F.Supp. 3d at 22. Under 49 CFR § 1113.7, intervention may be granted upon the timely filing of a petition or, in exceptional circumstances, by oral motion at a hearing. A petition for leave to intervene must outline the grounds for the proposed intervention, the petitioner’s interest in the proceeding, and whether the petitioner supports or opposes the relief sought. *Id.* Leave may be granted where the petitioner raises issues reasonably pertinent to those already presented and does not unduly broaden them. *Id.* If leave is granted, the petitioner becomes an intervenor and a party to the proceeding. *Id.*

RTC has not complied with these requirements by filing a petition for leave to intervene. Accordingly, RTC is not a party to this proceeding and has no right to file substantive pleadings herein.

Here, RTC’s Reply and Opposition is purely obstructive. RTC has not properly petitioned for leave to intervene under the STB’s promulgated rules. Furthermore, its participation in this proceeding does not promote the orderly conduct of this matter but instead introduces unnecessary complications and threatens to broaden its scope. RTC does not have standing to intervene in this proceeding. Therefore, STB should strike the contents of RTC’s Reply and Opposition as it inhibits the orderly conduct of public business.

DATED this 18th day of March, 2026.


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CERTIFICATE OF SERVICE

I hereby certify that, on the 18th day of March, 2026, a true and correct copy of the foregoing documents addressed to and by the following checked means :

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