SERVICE DATE – AUGUST 27, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 346X

BAD WATER LINE—ABANDONMENT EXEMPTION—IN FREMONT COUNTY, WYO.

Digest:[1] This decision denies a petition to reopen this proceeding and revoke the notice of interim trail use or abandonment (NITU) covering a rail line in Wyoming and denies an alternative request to enforce a provision of the NITU and the trail use agreement.

Decided: August 27, 2026

On February 11, 2026, Jacob Z. Stetler and Karline Z. Stetler (the Stetler Family), individually, and Thomas L. Herbst and Michele E. Herbst (the Herbst Family), individually and as trustees of the Epic Legacy Living Trust dated September 5, 2025,[2] filed a petition to reopen this proceeding and revoke the notice of interim trail use or abandonment (NITU) covering a rail line in Fremont County, Wyo., for which an interim trail use/railbanking agreement was reached in 1991. In the alternative, if revocation is not granted, Petitioners seek enforcement of certain conditions contained in the interim trail use/railbanking agreement and the 1991 decision and NITU issued by the Interstate Commerce Commission (ICC). For the reasons discussed below, the Board will deny the petition.

BACKGROUND

In 1991, a rail carrier called Bad Water Line (BWL) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon its 22.544-mile rail line between milepost 703.068, near Shoshoni, and milepost 725.612, at the end of the line in Riverton, Fremont County, Wyo. (the Line). Notice of the exemption was served and published in the Federal Register on March 13, 1991 (56 Fed. Reg. 10,573), and the exemption was scheduled to become effective on April 12, 1991.

By decision and NITU served April 10, 1991 (1991 NITU), a 180-day period was authorized for Fremont County (the County), as trail sponsor, to negotiate with BWL for interim trail use/railbanking of the Line pursuant to the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). On May 10, 1991, BWL and the County entered an interim trail

[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 Stetler Family and the Herbst Family are referred to collectively as Petitioners.

use/railbanking agreement (the 1991 Agreement) covering the Line. According to the petition, BWL transferred the Line's right-of-way to the County by deed on October 1, 1991. (Pet. 3.)

Petitioners state that the Stetler Family and the Herbst Family own parcels of real property, acquired in 2021 and 2017,[3] respectively, which the Line's right-of way traverses. (See id. at 3-5.) The petition alleges that the Fremont County Assessor began assessing ad valorem taxes on the portion of the Line's right-of-way traversing the Stetler Family and Herbst Family properties sometime after the October 1991 transfer of the right-of-way to the County and before the Stetler Family and the Herbst Family came into possession of their properties. (Id. at 4-7.) The petition contends that because the Trails Act requires the County to "take responsibility for all current and future assessments" on the railbanked right-of-way, (id. at 5), the tax assessments are in violation of the Trails Act, the 1991 Agreement, and the 1991 NITU, as well as the Fifth Amendment of the U.S. Constitution.[4] (See id. at 4-7.)

Petitioners assert that the County Assessor's public map server did not indicate that a trail existed on their properties; instead, that server showed a trail existing from Riverton to the Wind River Reservation. (See id. at 5; see also id., Ex. G.) According to Petitioners, the Stetler Family paid the assessed taxes, believing the Line was abandoned, until they discovered, through communications with the County Attorney on September 27, 2023, that the County claimed a right-of-way easement through their property. (Pet. 5.) The Stetler Family sent a demand for a refund to the Fremont County Commissioners and the County Assessor's Office. (Id. at 6.) According to the petition, although the County determined it was inappropriate to continue to assess ad valorem taxes on the Stetler Property, the County Commissioners denied refunding the ad valorem taxes that had already been assessed and paid prior to June 4, 2024. (Id.) The Stetler Family further pursued a refund of the ad valorem taxes through county and state processes without success. (See Pet., Ex. N, ¶¶ 2, 10-14.) Regarding the Herbst Family, it appears from the petition that they paid the taxes assessed on their property each year and, unlike the Stetler Family, have not appealed those assessments in any county or state-level proceedings. (See Pet. 5.) In addition to the tax issue, Petitioners further contend that the County "failed to maintain" the right-of-way "until putting in new fences in 2023." (Id. at 6.)

Based on these arguments, Petitioners request that the Board reopen this proceeding and revoke the County's NITU for the portion of the Line traversing their properties or, alternatively, "enforce" the 1991 NITU and 1991 Agreement to have the Stetler Family and Herbst Family

---

[3] The petition states that Thomas L. Herbst came into ownership of the property on or about December 27, 2017, and on February 4, 2024, he quitclaimed the property to himself and Michele E. Herbst. (Pet. 4-5.) Thereafter, Thomas L. Herbst and Michele E. Herbst quitclaimed the property to Thomas L. Herbst and Michele E. Herbst as trustees of the Epic Living Trust. (Id. at 5.)

[4] Although Petitioners do not elaborate on the claim that their Fifth Amendment rights were violated, it appears that their argument is that the County's assessment of taxes constituted a taking of their properties.

reimbursed for the loss of their property and prior taxes assessed and paid with interest. (Id. at 7.)

On March 2, 2026, the County filed a reply in opposition to the petition, arguing that the County has never assessed a tax on the County's railbanked easement crossing the Stetler Family and Herbst Family properties. (See County Reply 1-2.) Rather, the County argues that the Stetler Family and Herbst Family have paid taxes on their servient fee simple estates. (Id. at 2.) According to the County, both families had actual and constructive knowledge of the County's railbanked right-of-way when they purchased their respective properties. (Id.) The County argues that the language in the Trails Act, 1991 NITU, and the 1991 Agreement related to the trail sponsor assuming responsibility for taxes assessed against the right-of-way only applies when the easement itself is taxed, not, as here, where the servient estate is taxed. (See id. at 3.) The County notes that the families have recourse under Wyoming law to seek reductions in the assessed value of their properties, which the Stetler Family did and received a valuation reduction. (See id. at 4.)

On March 3, 2026, the Rails to Trails Conservancy (RTC) also filed a reply in opposition to the petition. RTC contends that Petitioners' claim that they were unaware that a trail traversed their properties when those properties were purchased is not credible. (RTC Reply 2-3, Mar. 3, 2026.) In any event, according to RTC, Petitioners' "discovery" of the existence of the trail, 1991 NITU, and 1991 Agreement do not amount to new evidence or substantially changed circumstances. (Id.) In addition, RTC argues that the Board has no jurisdiction over Petitioners' argument that a "taking" occurred because the County failed to provide a refund of ad valorem taxes, and the Board is not the proper venue to adjudicate whether assessment of those taxes violated Petitioners' Fifth Amendment rights. (Id. at 4-5.) RTC further argues that Petitioners' vague assertion that there is a property dispute related to the location of the fencing around the trail is an issue that can be addressed in state court. (Id. at 6.) Finally, RTC argues that Petitioners' claim that the County has failed to maintain the trail is unfounded and, regardless, does not provide a basis for challenging the 1991 NITU. (Id. at 6-7.)

Petitioners filed an objection to RTC's reply on March 18, 2026, contending that RTC has not sought to intervene in this proceeding and is not a party. (Petitioners Reply 3.) According to Petitioners, RTC does not satisfy the standards for judicial standing, and its participation would unnecessarily complicate this proceeding. (Id. at 3-4.) Petitioners therefore request that the Board strike RTC's reply. (Id. at 5.)

RTC replied to Petitioners' objection on April 7, 2026, arguing that Petitioners ignore the Board's rule at 49 C.F.R. § 1152.25 related to participation in abandonment proceedings. (RTC Reply 2-3, Apr. 7, 2026.) RTC notes that it has participated as a party and commenter in numerous Board proceedings involving interim trail use/railbanking under the Trails Act. (Id. at 3-4.)

PRELIMINARY MATTER

Petitioners argue that the Board should strike RTC's reply to their petition to reopen because RTC did not seek leave to intervene in the proceeding, and, in any event, does not have standing, citing judicial precedent applying the constitutional minimum requirements for standing to raise issues in the federal courts. However, the Board is not bound by the strict requirements of standing that govern judicial proceedings. N.C. R.R.—Pet. to Set Trackage Comp. & Other Terms & Conditions—Norfolk S. Ry., FD 33134, slip op. at 2 n.9 (STB served May 29, 1997). Further, in abandonment proceedings, the Board's regulations allow interested persons to become parties by filing written comments. See 49 C.F.R. § 1152.25(a)(1). RTC is sufficiently "interested" within the meaning of § 1152.25(a)(1): it is a national nonprofit organization "dedicated to preserving otherwise to-be-abandoned rail corridors for possible future rail reactivation . . . and for other compatible interim public uses, including trail use." (RTC Reply 1, Mar. 3, 2026.) Moreover, the petition calls into question the continued availability of the Trails Act, and the requirement that trail sponsors assume full responsibility for paying taxes assessed on the right-of-way, when a state or local subdivision that is serving as a trail sponsor assesses its own tax on the property underlying the railbanked corridor. This question is of relevance to RTC's stated mission. Accordingly, the Board will permit RTC's participation as a party, accept RTC's reply to the petition to reopen, and deny Petitioners' request to strike.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, the Board may reopen a proceeding because of "material error, new evidence, or substantially changed circumstances." For reopening to be granted, the alleged grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected. See Montezuma Grain Co. v. STB, 339 F.3d 535, 541-42 (7th Cir. 2003); Canadian Nat'l Ry.—Control—EJ&E W. Co., FD 35087 (Sub-No. 8), slip op. at 4 (STB served Dec. 21, 2018).

Petitioners have failed to present any new evidence or substantially changed circumstances that would warrant reopening this proceeding. See 49 C.F.R. § 1115.4. In addition, although not specifically raised by Petitioners, the Board finds no material error in the ICC's issuance of the 1991 NITU. See id.

Under the Trails Act, if a prospective trail sponsor is prepared to assume "full responsibility for management" of a railbanked right-of-way and for "any legal liability arising out of" the right-of-way's transfer to or use by the trail sponsor, and "for the payment of any and all taxes that may be levied or assessed against" the right-of-way, the Board must impose such terms and conditions as a requirement of any transfer or conveyance of the right-of-way to the trail sponsor for interim trail use. 16 U.S.C. § 1247(d). The purpose of this requirement is to "save and hold the railroad harmless from all of these duties and responsibilities," and thereby incentivize transfer of the right-of-way to a trail sponsor for trail use. H.R. Rep. No. 98-28, at 8-

9 (1983), as reprinted in 1983 U.S.C.C.A.N 119, 120. The Board complies with this requirement by requiring that a prospective trail sponsor file a "statement indicating [its] willingness to assume full responsibility" for liability, taxes, and managing the right-of-way, at the time it expresses its interest in interim trail use/railbanking. 49 C.F.R. § 1152.29(b). The Board presumes that any private organization that files such a statement meets the statutory requirement to be a trail sponsor. Jost v. STB, 194 F.3d 79, 89 (D.C. Cir. 1990). However, that presumption may be rebutted, and the NITU "involuntarily revoked," where it is "shown that the trails sponsor does not have the ability to continue to meet the financial and liability conditions of the statute." Id. (quoting Cent. Kan. Ry.—Aban. Exemption—in Marion & McPherson Cntys, Kan., AB 406 (Sub.-No. 6X), slip op. at 4-5 (Dec. 18, 1998)).

Petitioners' argument that the County's assessment of ad valorem taxes on their properties demonstrates a failure to take "complete responsibility for the railroad right-of-way," (Pet. 6), under the Trails Act is unavailing. The Trails Act requires the trail sponsor to "assume full responsibility" for, among other things, the "payment of any and all taxes that may be levied or assessed against [railbanked] rights-of-way." 16 U.S.C. § 1247(d). Here, there is no evidence of any tax assessment against the right-of-way itself (i.e., the "railbanked easement" held by the County) as opposed to an assessment against underlying servient estates. And, in considering whether a trail sponsor is continuing to assume "full responsibility" for the payment of taxes as contemplated by the Trails Act, what is relevant is whether the trail sponsor "has failed or likely will fail to pay taxes." Cent. Kan. Ry.—Aban. Exemption—in Marion & McPherson Cntys., Kan., AB 406 (Sub-No. 6X), slip op. at 2 (STB served June 23, 2000). Here, Petitioners do not claim that the County, as the trail sponsor, has failed or likely will fail to pay taxes. Nor does the County's assessment of taxes against the owners of the servient estates underlying the right-of-way (the Stetler Family and Herbst Family) otherwise call into question the County's financial fitness as a trail sponsor or ability to hold the rail carrier harmless for tax liability and thus is not a basis for the Board to reopen and revoke the 1991 NITU.

The Board finds no other basis in the petition to warrant reopening and revoking the 1991 NITU. The County denies Petitioners' allegation that it failed to maintain the right-of-way until installing fencing in 2023, (see Pet. 6), and asserts that since 1991 it has expended significant time and funds to maintain the right-of-way for recreational trail use, (see County Reply 3). Putting aside the fact that Petitioners' allegations regarding maintenance appear to be moot, because the County installed fencing around the right-of-way, the Board has refused to establish a "standard by which a trail sponsor could demonstrate its fitness to manage and maintain a particular trail." Cent. Kan. Ry.—Aban. Exemption—in Marion & McPherson Cntys, Kan., AB 406 (Sub.-No. 6X), slip op. at 5 (STB served May 8, 2001). Rather, the Board leaves to state authority (including courts) "the responsibility to interpret and enforce any state or local requirements applicable" to any particular trail. Id.; see also Norfolk & W. Ry.—Aban. Exemption—Between Kokomo & Rochester in Howard, Miami, & Fulton Cntys., Ind., AB 290 (Sub-No. 168X), slip op. at 12-13 (STB served May 4, 2005) (finding that the Board could consider whether to revoke a trail sponsor's NITU if a state court determined that the trail sponsor failed to properly manage the trail in a lawful manner). Here, Petitioners have not demonstrated that a state authority has found that the County "failed to manage the trail in a lawful manner" under applicable state and local requirements so as to potentially call into question its fitness as a trail sponsor. See Cent. Kan. Ry.—Aban. Exemption—in Marion & McPherson Cntys, Kan., AB 406 (Sub.-No. 6X), slip op. at 5 (STB served May 8, 2001). And the Board otherwise does not become "involved in determining the type or level of trail use for a particular right-of-way," or set a "time limit for how quickly a trail must be developed to its intended level of use." CSX Transp., Inc.—Aban. Exemption—in Monroe & Owen Cntys., Ind., AB 55 (Sub-No. 514X), slip op. at 2 (STB served Sept. 30, 1997) (citing Mo. Pac. R.R.—Aban. in Okmulgee, Okfuskee, Hughes, Pontotoc, Coal, Johnston, Atoka, & Bryan Cntys., Okla., AB 3 (Sub-No. 63), slip op. at 4 (ICC served Jan. 4, 1991)). Moreover, Petitioners have not alleged that the County has done anything that would preclude the railroad from reasserting control over the right-of-way at some future time to reactivate rail service,[5] in violation of the Trails Act's requirement that any railbanked right-of-way be "subject to restoration or reconstruction for railroad purposes." 16 U.S.C. § 1247(d).[6]

Petitioners' alternative request—that the Board enforce provisions of the 1991 NITU and the 1991 Agreement related to taxes—will also be denied. Petitioners claim that the County's assessment of ad valorem taxes on their properties violates the 1991 NITU, the 1991 Agreement, and the Trails Act, as well as the Fifth Amendment of the U.S. Constitution. Petitioners' argument amounts essentially to the claim that the County over-taxed the servient estates by failing to discount the estates' value because of potential trail use. But as explained above, that claim does not implicate the County's responsibility under the Trails Act or the Board. And whether the County's tax assessments violated state law or Petitioners' constitutional rights is

---

[5] BWL may not be the entity holding the right to reactivate rail service. The Bighorn Divide & Wyoming Railroad (BDW) was authorized to acquire and operate the rail lines of BWL. See Bighorn Divide & Wyo. R.R.—Acquis. & Operation Exemption—Rail Lines of Bad Water Line, Inc. in Riverton, Wyo., FD 34195 (STB served May 21, 2002). According to the verified notice of exemption filed in that proceeding, the owners of BWL agreed to reorganize as BDW. Verified Notice 2, Bighorn Divide & Wyo. R.R.—Acquis. & Operation Exemption—Rail Lines of Bad Water Line, Inc. in Riverton, Wyo., FD 34195. Although the Line was not mentioned in that proceeding, BDW represented in the verified notice that the transaction included "all assets owned by the former [BWL]." Id.

[6] As to Petitioners' assertion that they were unaware that there was a trail traversing their properties, (see Pet. 5), the Board notes that courts have repeatedly held that publication of a notice of exemption in the Federal Register, such as was published here in March 1991, is legally sufficient notice of an agency action to all interested or affected persons, regardless of actual knowledge or hardship resulting from ignorance. See, e.g., Nat'l Ass'n of Reversionary Prop. Owners—Pet. for Rulemaking, EP 778, slip op. at 4 (STB served Feb. 24, 2026).

within the purview of an appropriate court, not the Board.[7] See 28 U.S.C. § 1331 (giving the U.S. district courts "original jurisdiction of all civil actions arising under the Constitution"); Sunflower Rails-Trails Conservancy, Inc.—Pet. for Declaratory Ord.—Sale of Railbanked Right-of-Way, FD 36034, slip op. at 5-7 (STB served Feb. 23, 2017) (stating that a state court would need to determine whether it was lawful to assess taxes on a right-of-way before the Board could consider a petition to revoke the trail condition based on a trail sponsor's failure to pay those taxes).[8]

Based upon the foregoing, the Board will deny the petition. Petitioners have not shown any material error, new evidence, or substantially changed circumstances that would warrant reopening this proceeding.

It is ordered:

1. Petitioners' request to strike RTC's March 3, 2026 reply is denied. RTC is permitted to participate as a party in this proceeding, and its reply is accepted into the record, as explained above.

2. Petitioners' petition to reopen is denied, as explained above.

3. This decision is effective on its service date.

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

---

[7] A court would also be the appropriate forum to address a claim related to Petitioners' assertion that, when installing the fence around the right-of-way, the County "did not survey the actual boundary, and the fence's location is also in question." (Pet. 6.) The Board has previously stated that the size and extent of a railroad easement is a matter of state property law and best addressed by state courts. See, e.g., Allegheny Valley R.R.—Pet. for Declaratory Ord., FD 35388, slip op. at 3 (STB served Apr. 25, 2011).

[8] Petitioners ask the Board to award them attorney fees under 49 C.F.R. part 1016 and 42 U.S.C. § 4654(c). The Board need not decide whether attorney fees are appropriate under 49 C.F.R. part 1016 because the petition to reopen is being denied. Moreover, 42 U.S.C. § 4654(c) applies to litigation expenses for plaintiffs who obtain a court judgment or a settlement against the United States for the taking of property by a federal agency under 28 U.S.C. §§ 1346(a)(2) or 1491. No such claim has been asserted or is otherwise at issue here.