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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CITY OF FISHERS, CITY OF	)	
NOBLESVILLE, AND HAMILTON	)	FINANCE DOCKET
COUNTY, INDIANA – PETITION FOR	)	NO. 36137
PARTIAL REVOCATION OF	)	
EXEMPTION	)	
	)	
NORFOLK AND WESTERN RAILWAY	)	
COMPANY – ABANDONMENT	)	DOCKET NO. AB-290 (Sub-No. 117X)
EXEMPTION – BETWEEN INDIANAPOLIS	)	
AND TIPTON IN MARION, HAMILTON,	)	
AND TIPTON COUNTIES, IND.	)	

**VERIFIED MOTION FOR PRELIMINARY INJUNCTION
PURSUANT TO 49 U.S.C. § 1321(b)(4)**

US RAIL HOLDINGS, LLC
7846 West Central Avenue
Toledo, OH 43617

Movant

Submitted By:

Donn C. Meindertsma
Conner & Winters, LLC
1850 M Street NW, Suite 600
Washington, DC 20036
(202) 887-5711
dmeindertsma@cwlaw.com

Attorney for Movant

Date: March 29, 2019

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INTRODUCTION

Pursuant to 49 U.S.C. § 1321(b)(4), US Rail Holdings, LLC (“USR”) seeks from the Surface Transportation Board (“Board”) a preliminary injunction enjoining the cities of Fishers and Noblesville, Ind., and Hamilton County, Ind. (collectively, “Petitioners”), and their agents, including Hoosier Heritage Port Authority (“HHPA”), from removing the track and other rail assets along a part of the 37.56-mile rail line (“Line”) at issue here between milepost I-2.13 at Indianapolis, Ind. and milepost I-23 at Noblesville, Ind. (“the NITU Line”), pending a decision by the Board on USR’s Motion to Vacate the NITUs and to Reactive Rail Service on the NITU Line in this proceeding filed by USR simultaneously with this motion. Attached hereto, in support thereof, is the Second Verified Statement of Danielle Mitchell, USR President (“Mitchell VS”). Attached hereto as Exhibit A.

On May 31, 2018, the Board decided that Petitioners may pursue rail banking of the Line under the trail use provisions without revocation authority from the Board (“Decision”). The Board did not address what route USR could take to purchase the Line from Petitioners now that they did not have to seek abandonment authority in a new proceeding. As a result, USR asked the Board for guidance in this proceeding by Motion for Clarification on the proper way to buy the Line.

On December 21, 2018, the Board ruled that the appropriate path for USR to purchase the Line would be for the Petitioners to invoke the Trails Act by obtaining Notices of Interim Trail Use (“Decision II”). Then, USR would be able to move the Board to vacate the NITUs and reactivate rail service pursuant to the Trails Act. Petitioners did invoke the Trails Act by seeking three NITUs (“NITUs”), that make up the NITU Line. Afterwards, the Board issued the NITUs to Petitioners. Decision II, slip op. at 11.

On January 14, 2019, Petitioners also reached a trail use agreement with the City of Fishers on the NITU Line in the original abandonment proceeding (“Fishers Trails Use Agreement”), Norfolk & W. Ry. – Aban. Exemption – Between Indianapolis & Tipton in Marion, Hamilton, & Tipton Ctys., Ind. (“N&W”), AB 290 (Sub-No. 117X), et al. (ICC decided Nov. 4, 1991). Attached hereto as Exhibit B. **The Fishers Trail Use Agreement provides that Petitioners will remove the track and other rail assets on the NITU Line and liquidate the remaining rail assets to facilitate trail use.** Exhibit B at p. 2. As a result, USR is very concerned that the trackage and other rail assets on the NITU Line will be removed by Petitioners before it has an opportunity to seek authority from the Board to pursue the purchase of the NITU Line and vacate the NITUs in accordance with Board regulations.

STATEMENT OF FACTS

The Line was previously owned by Norfolk and Western Railway Company (“N&W”), and rail service on the Line was provided by the Indiana Rail Road (“INRD”) pursuant to a lease authorized by the Interstate Commerce Commission (“ICC”), the Board’s predecessor. Ind. R.R. – Lease & Operation Exemption – Norfolk & W. Ry., FD 31464 (ICC decided Jul. 3, 1989). In 1991, the ICC granted INRD authority to discontinue service over the Line and granted N&W authority to abandon the Line. N&W, AB 290 (Sub-No. 117X), et al.

In 1995, the cities of Fishers and Noblesville purchased the Line from N&W, and Hamilton County became a joint owner of the Line in 2006. The 1995 purchase was not subject to ICC licensing authority pursuant to Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions (“Common Carrier Status of States”), 363 I.C.C. 132 (1980), aff’d sub nom. Simmons v. I.C.C., 697 F.2d 326 (D.C. Cir. 1982). Pursuant to that decision, where a state entity acquires a line of railroad approved for abandonment and the abandonment has not been consummated, the acquisition is exempt from Board regulation.

On August 1, 2017, Petitioners filed a petition for partial revocation of their exempt status under Common Carrier Status of States. Petitioners explicitly sought revocation so that they could seek abandonment in a new proceeding, rail bank the Line and develop a trail pursuant to the Trails Act, 49 U.S.C. § 1247(d), and the Board’s interim trail use regulations, 49 C.F.R. § 1152.29.

On May 31, 2018, the Board served the decision in this proceeding in response to the Petition (“Decision”). The Board found that the Petitioners were exempt from certain regulation under Common Carrier Status of States. Decision, slip op. at 5. It also decided that the abandonment of the Line authorized in 1991 was never consummated. Id. at 6. Finally, the

Board found “that Petitioners can directly invoke the Trails Act without the need to revoke their exempt status or commence a new abandonment proceeding, because it has allowed similarly situated line owners to do so on lines acquired under Common Carrier Status of States.” Id. at 6. The Board specifically rejected the argument by USR and ITM for a new abandonment proceeding but did not elaborate on whether they could pursue another avenue at this point to attempt to purchase the Line from Petitioners. Id. at 7.

On June 8, 2018, Fishers petitioned the Board for a NITU on five miles of the NITU Line from approximately MP I-14 to approximately MP I-19 in this abandonment proceeding (“Fishers NITU Request”). N&W, AB 290 (Sub-No. 117X), et al. This filing caused USR to file a Motion for Preliminary Injunction to prohibit Petitioners from removing any track or other rail assets on the Line to implement its trail use plan. USR also simultaneously filed a Motion for Clarification that asked the Board for guidance on how it could purchase the Line based on Petitioner’s failure to consummate the abandonment and the Fishers NITU Request.

On August 6, 2018, Noblesville and the other owners of the Line, Fishers and Hamilton County, jointly filed a request in Docket No. AB 290 (Sub-No. 117X) for issuance of a NITU for approximately four miles of the NITU Line, with Noblesville as the proposed trail sponsor (“Noblesville NITU Request”). This segment of the Line connects with the north end of the segment at MP I-19 over which Fishers has requested a NITU and ends at MP I-23. On August 14, 2018, USR responded in opposition to the Fishers and Noblesville NITU Requests, incorporating by reference its earlier pleadings.

On August 17, 2018, Indianapolis and the Petitioners jointly filed in Docket No. AB 290 (Sub-No. 117X) a request for issuance of a NITU for approximately 11.87 miles of the NITU Line, with Indianapolis as the proposed trail sponsor (“Indianapolis NITU Request”).

This segment of the Line connects with the south end of the segment at MP I-14 over which Fishers has requested a NITU and ends at MP I-2.13. On September 5, 2018, USR replied in opposition to the Indianapolis NITU Request filed by Indianapolis, incorporating by reference its earlier pleadings.

On December 21, 2018 in Decision II, the STB ruled on USR's Motions for Clarification and Preliminary Injunction and Petitioners' request for the NITUs. First, the STB denied USR's request for a preliminary injunction on the ground that there was no irreparable harm, because "a lost business opportunity alone does not" meet this standard. Decision II, slip op. at 7. The STB issued the NITUs on the NITU Line under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. Id. at 11. It also clarified the path by which rail service could be restored over the Line by USR.

On January 14, 2019, the City of Fishers Board of Public Works & Safety approved a license agreement to operate a trail on the NITU Line pursuant to the Trails Act. HHPA, acting on behalf of Fishers, Noblesville, and Hamilton County, entered into the Fishers Trails Use Agreement (Exhibit B) with Fishers in its individual capacity as a trail sponsor. **A provision in the Fishers Trails Use Agreement provides that HHPA will remove all trackage and other rail assets on the NITU Line from MP I-23 in Noblesville to MP I-2.13 in Indianapolis to facilitate trail use.** Id. at p. 2. HHPA and Fishers failed to file the Fishers Trails Use Agreement within 10 days of reaching it in accordance with 49 C.F.R. § 1152.29(h).

USR states that any removal of the track and other rail assets on the NITU Line now would cause it irreparable harm because its reactivation of rail service would become cost prohibitive at that point. Mitchell VS at paragraph 9. In contrast, no one would suffer any harm if the track and rail assets remain in place while USR pursues its Motion to Vacate NITUs and

Reactivate Rail Service, and the reactivation of common carrier freight rail service could be realized. Id. at paragraph 10. The Line has been in a suspended state for over 26 years and pausing a few more months to review whether reactivation of rail service is permissible under the Board's regulations would not hurt anyone.

DISCUSSION

Pursuant to 49 U.S.C. § 1321(b)(4), “[t]he Board may...when necessary to prevent irreparable harm, issue an appropriate order...” An “appropriate order” under Section 1321(b)(4) includes a preliminary injunction, and the Board has recognized that the statutory provision was designed “‘to grant administrative injunctive relief to address threats of irreparable harm ... in the exemption context,’ as well as ‘in other areas of the Board’s jurisdiction.’” Public Views on Major Rail Consolidations, 4 S.T.B. 586, 595 (2000) (quoting H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 168-169, 170, 233 (1995)). Because Petitioners invoked the Trails Act by seeking these NITUs, the Board found that the NITU Line would be subject to its jurisdiction. Decision II, slip op. at 8. As a result, the Board can prohibit Petitioners from removing the track and other rail assets to prevent irreparable harm to USR until the Board has determined whether USR can reactivate rail service on the NITU Line and vacate the NITUs.

To obtain an injunction, the requesting party must show: (1) it will suffer irreparable harm in the absence of an injunction; (2) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be enjoined; (3) the public interest supports the granting of the injunction; and (4) other interested parties will not be substantially harmed by an injunction. See Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958); Am. Chemistry Council v. Ala. Gulf Coast Ry., NOR 42129, slip op. at 4 (STB served

May 4, 2012). Irreparable harm is the main consideration relevant to the granting of injunctive relief. DeBruce Grain, Inc. v. Union Pacific R.R. Co., 2 S.T.B. 773, 776 (1997). As demonstrated below, the criteria for a preliminary injunction have been met in this case.

1. Irreparable Harm to USR without a Preliminary Injunction.

USR would be irreparably harmed if the Board denies its request for a preliminary injunction. If Petitioners remove the track and other rail assets on the NITU Line, reactivation of the NITU Line to provide interstate common carrier freight service would become prohibitively expensive. This would effectively bar USR from pursuing the reactivation and would frustrate the policy of railbanking under the Trails Act. For all practical purposes, track removal would also permanently disconnect this area from the United States rail network. Mitchell VS at paragraph 9.

In determining whether irreparable harm has been demonstrated, the Board looks to whether the requesting party will suffer unredressable actual and imminent harm absent the injunction. Am. Chemistry Council v. Ala. Gulf Coast Ry., NOR 42129, slip op. at 5 (STB served May 4, 2012). Here, the removal of the track and other rail assets is imminent as Petitioner Fishers has reached the Fishers Trails Use Agreement with Petitioners through HHPA in the corresponding abandonment proceeding. In the Fishers Trails Use Agreement, there is a provision that provides for removal of the track and other rail assets, on the entire NITU Line: **“Whereas, to facilitate Interim Trails Use, the owners and HHPA have decided to (a) remove trackage and other rail assets from approximately milepost I-23 in Noblesville, Indiana to milepost I-2.13 in Indianapolis, Indiana... and (c) liquidate the remaining rail assets.”** Exhibit B at p. 2 (emphasis added). This track removal would be unredressable because the possibility of reactivation of rail service on the NITU Line would all but disappear. Mitchell

VS at paragraph 9. However, if the Board prohibits removal of the track and other rail assets, reactivation of the NITU Line as a commercially productive railroad providing freight rail service to local shippers could become a reality for this part of Indiana. Id. at paragraph 10.

The Board stated that loss of a business opportunity would not amount to irreparable harm in denying USR's prior motion for a preliminary injunction in Decision II. Generally, loss of business opportunity does not amount to irreparable harm because money damages can fully compensate a party for a loss. "However, when courts cannot establish and measure the injury in terms of money, courts have found irreparable harm." Coastal Distribution, LLC v. Town of Babylon, 2006 WL 270252, at *3 (E.D. N.Y. 2006). Loss of business opportunities and relationships with clients who could "produce an indeterminate amount of business over years to come" are hard to measure in dollars and are properly considered irreparable harm. Register.com, Inc. v. Verlo, Inc., 356 F.3d 393, 404 (2d Cir. 2004). Here, where there is an established need for rail service, and the rail business would bring new service to the area, it would be extremely difficult to determine the losses that would be suffered by USR if Petitioners remove the track and end the possibility of rail service on the NITU Line. These types of injuries constitute irreparable harm. See Coastal Distribution, 2006 WL 270252, at *4 (Where Plaintiffs would not be able to offer the public reliable transload and rail services due to injuries from Defendants, Plaintiffs would lose potential and current clients and an indeterminate amount of business over the years, thereby constituting irreparable harm.)

Moreover, this case is not simply about the loss of a business opportunity. Petitioners have invoked the Trails Act, and their plans—if not enjoined—threaten the public policy behind this law to maintain rail service on railbanked lines. Without adequate Board protection of an existing rail line, rail owners would always be able to frustrate the purposes of the Trails Act by

removing the track as soon as the possibility of rail reactivation surfaces. This problem is especially pronounced where, as here, the rail line owner is also the trail sponsor.

Because USR has demonstrated that it is financially responsible and there is a need for rail service, to tolerate the removal of the tracks and other rail assets now would cause harm that could never be overcome from these substantial, additional costs to develop the Line. See Colorado Wheat Administrative Committee, et al. v. V&S Ry., LLC NOR 42140, slip op. at 4 (STB served May 7, 2015) (irreparable harm found if owner was permitted to remove track before a feeder line application was acted upon by the Board). To prevent this significant, irreparable harm, the Board should grant USR's motion for preliminary injunctive relief.

2. Strong Likelihood of Success on the Merits by USR.

There is a strong likelihood of success on the merits for the Board to grant the request by USR to reactivate rail service on the NITU Line and vacate the NITUs issued herein. The Board provided that because "NITUs have been requested, if U.S. Rail wishes to seek to restore service on the Line, the appropriate path is by seeking to vacate a NITU or NITUs to reactivate service, after a NITU or NITUs has or have been issued and the Board is notified a Trails Act agreement has been reached." Decision II, slip op. at 10.

The Board then laid out the process and standard for third-party reactivation of a railbanked line:

[A] bona fide third-party petitioner, under appropriate circumstances, can request that a NITU be vacated to permit the reactivation of rail service. A bona fide petitioner is one that has sufficient financing and demonstrates sufficient shipper demand to warrant the proposed reactivation. Whether a petitioner is bona fide is a fact-bound determination. Ballard Terminal R.R.—Acquis. & Operation Exemption—Woodinville Subdivision, FD 35731 et al., slip op. at 4-5 (STB served Dec. 30, 2014); see also GNP Rly. Inc.—Acquis. & Operation Exemption—Redmond Spur & Woodinville Subdivision, FD 35407 et al., slip op. at 5 (STB served June 15, 2011) ("a bona fide petitioner, under appropriate circumstances, could request that the NITUs be vacated to permit reactivation of

the line segments for continued rail service in the future”).

Id. The Board has previously held that demand for freight rail service must only be supported by “credible evidence” but must include more than just “vague support.” See Ballard Terminal R.R., FD 35731 et al. at 7. In addition, the Petitioners have the initial right to reactivate service and must refuse to provide service on the Line for another party to seek reactivation. Decision II, slip op. at 10.

USR clearly meets the first prong of the “bona fide petitioner” standard in that it has “sufficient financing” to purchase and operate the NITU Line. USR is requesting that the Board order the transfer of all rail assets to it at their net liquidation value and the underlying property on the NITU Line. Petitioners intend to remove the track and other rail assets on the NITU Line as stated in the Fishers Trails Use Agreement. As a result, these assets only presently have a liquidation value to Petitioners based on the rail trail plan.

Applying by analogy, the “preliminary financial responsibility” provision in 49 C.F.R. § 1152.27(c)(1)(ii) for offers of financial assistance under 49 U.S.C. § 10904, USR meets this requirement. USR has in place a quote from Nottingham Rail Consulting for the delivery of random lengths of rail at a price of \$330.00 per gross ton dated March 22, 2019. Based upon this scrap price per ton times 132 short tons times 20.87 miles of rail, the scrap value of the line is \$909,097.00. The additional sum pursuant to 49 C.F.R. § 1152(c)(1)(ii) of \$4,000 times 20.87 is \$83,480.00 times 2 equals \$166,960.00. The total preliminary financial responsibility is \$1,076,057.00 (\$909,097.00 + \$166,960.00 = \$1,076,057.00). Mitchell VS at paragraph 6. USR has “sufficient financing” available through a line of credit in excess of that amount to pay the purchase price. Mitchell VS at

paragraph 4. Accordingly, USR satisfies the first prong of the “bona fide petitioner” standard.

Second, USR must demonstrate that there is “sufficient shipper demand” for rail service on the NITU Line to satisfy the second prong of the “bona fide petitioner” standard. USR has provided three letters from local businesses who have requested rail service on the NITU Line. Attached hereto as Exhibit C. Crown Technology, Inc. (“Crown”), Stone Spectrum (“Stone”), and The Quikrete Companies (“Quikrete”) have filed comments in this proceeding expressing a need for rail service on the NITU Line. Quikrete and Crown are former shippers on the NITU Line. Crown has a private sidetrack to enable rail transportation and needs 1-2 car loads of rail service per week. Quikrete has buildings on both sides of the NITU Line and needs 5-10 car loads of rail service per day. Stone expressed a need for 100+ rail cars per year. Id. at paragraph 7. USR is ready to operate the NITU Line and handle this need for freight rail service if it obtains proper authority from the Board. Id. at paragraphs 5, 7. This amount of shipper demand of approximately 3800 car loads per year matches the amount of business of numerous successful short lines. See Exhibit D attached hereto. In addition, USR can run an excursion service on the NITU Line which has proven to be able to make \$705,000 per year in the past. Id. at paragraph 8. Also, First Transit has expressed an interest in providing interstate passenger service on the NITU Line, eventually connecting to Amtrak at Union Station in Indianapolis, Ind., if USR is given approval to purchase it. Id.

Moreover, Petitioners have demonstrated that they have no interest in providing rail service on this Line based on their filings in this proceeding where they claim there is no need for rail service on the NITU Line. The mayors of Fishers and Noblesville have both publicly said there is no need for freight service on the NITU Line. See Indianapolis Business Journal

Article attached hereto as Exhibit E. Petitioners also clearly state that they intend to remove all track on the NITU Line in the Fishers Trails Use Agreement which is the antithesis of demonstrating the desire to provide rail service. Moreover, based on information and belief, the Indiana Department of Transportation intends to build an overpass on I-465 that runs above the NITU Line. This overpass would be too low to allow rail traffic to pass. Mitchell VS at paragraph 9.

USR's likelihood of success here is extremely strong because the Board has ruled that vacating the NITUs and reactivation of rail service is the path for USR to buy the Line. USR has clearly met the two-pronged test to do so and stands ready to provide this much needed service. As a result, there is sufficient likelihood of success here to warrant an injunction that prohibits the removal of the track until the Board has an opportunity to rule on this request by USR to purchase the NITU Line.

3. Public Interest Considerations

The public interest decidedly warrants a preliminary injunction. As noted above, the NITU Line is over twenty miles long and the cost of replacing that much track would make reactivation of rail service cost prohibitive. The public interest is best served by keeping the track in place while the Board determines whether USR can purchase the NITU Line. The public interest would certainly be served by protecting the public's access to rail service in the event the Board finds in favor of a request by USR to purchase the NITU Line from Petitioners and to operate it. See Colorado Wheat, slip op. at 6.

Moreover, the public interest in granting this motion fits perfectly with the Board's expressed policy of preserving rail service for which there is a stated public need. As the Board has held, "we are mindful of Congress' intent, as expressed in many statutory provisions that

lines be kept within the rail system where possible.” Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, MI, AB 290 (Sub-No. 286), slip op. at 5-6 and note 15 (STB served February 14, 2008) (a denial of an adverse abandonment application opposed by a new short line railroad on account of potential new traffic); and BNSF Railway Company – Abandonment Exemption – In King County, WA, AB 6 (Sub-No. 465X), slip op. at 3-4 (STB served November 28, 2008) (denying an exemption from the offer of financial assistance provisions in an abandonment proceeding).

Petitioners’ plan to remove this track would run counter to the rail transportation policy “to ensure the development and continuation of a sound rail transportation system ... to meet the needs of the public.” 49 U.S.C. § 10101(4). It also would be offensive to the policy behind the Trails Act “to preserve established rights way for future reactivation of rail service.” 16 U.S.C. § 1247(d). In sum, all of the public interest arguments favor maintenance of the NITU Line for rail service over the development of a rail trail. As such, the public interest standard calls for the granting of a preliminary injunction.

4. No Harm to Other Interested Parties from an Injunction.

In all likelihood, the only parties that will claim harm from a preliminary injunction here are the Petitioners. They will likely argue that any injunction that prohibits the removal of tracks will hurt the public interest in the trail and the park. However, because the Trails Act’s purpose is to maintain lines for future rail service, the public interest in a trail and park is clearly trumped by USR’s rail plan in this context. In addition, USR has no objection to and even supports a trail alongside the reactivated rail line. This type of arrangement is commonplace across the United States and would be possible here. Hoosier Rails to Trails Council (“HRTTC”) supports this rail/trail arrangement on the NITU Line and has offered to work with USR to turn it into a

reality. See Letter from HRTTC to USR, attached hereto as Exhibit F. Therefore, both sides of this argument could have what they want without any harm to the public interest. Mitchell VS at paragraph 9. Moreover, Petitioners have had over twenty years to convert this NITU Line into a trail since the ICC authorized it for abandonment in 1991 or at least since it was purchased by the cities in 1995.

To require Petitioners to wait another few months before the Board determines whether it can be purchased would be insignificant based on this set of facts. Therefore, since the harm, if any, to other interested parties is de minimus, a preliminary injunction is warranted here.

CONCLUSION

As discussed above, the preliminary injunction factors lean heavily in favor of granting this motion, especially the irreparable harm that would occur to USR and the local area if the track was removed by Petitioners. As a result, the Board should grant this request for a preliminary injunction.

Respectfully submitted



Donn C. Meindertsma
Conner & Winters, LLP
1850 M Street N.W., Suite 600
Washington, D.C. 20036
(202) 887-5711

Counsel for Movant

Dated: March 29, 2019

CERTIFICATE OF SERVICE

I, Priscilla Leonard, hereby certify that a copy of the foregoing **VERIFIED MOTION FOR PRELIMINARY INJUNCTION PURSUANT TO 49 U.S.C. § 1321(b)(4)** dated March 29, 2019, was sent by email to Petitioners, and U.S. Mail to the all other parties in this proceeding.

A handwritten signature in blue ink, appearing to read "Priscilla Leonard", is written over a horizontal line.

Priscilla Leonard

EXHIBIT A

SECOND VERIFIED STATEMENT OF DANIELLE MITCHELL

1. My name is Danielle Mitchell, and my business address is 7846 West Central Avenue, Toledo, Ohio 43617. I am the President of the US Rail Holdings, LLC ("USR"). I have been the President for the past year. I am extremely familiar with the line of rail at issue in Finance Docket No. 36137 and Docket No. AB-290 (Sub-No. 117X) and the finances of USR.

2. I am making this statement in support of USR's Motions for Preliminary Injunction and to Vacate NITUs and Reactivate Rail Service filed herewith in this proceeding. The statements in these motions are true and correct. More specifically, this statement describes and documents that US Rail has sufficient financing to purchase and operate the rail line and there is sufficient need for rail service on the line of rail at issue that could serve the demand of shippers.

3. This rail line is owned by the cities of Fishers, Noblesville, Ind., and Hamilton County, Ind. (collectively, Petitioners). It is a 37.56-mile rail line that runs between milepost I-2.13 at Indianapolis, Ind. and milepost I-39.69 at Tipton, Ind. ("the Line"). A portion of the Line is presently subject to three Notices of Interim Trail Use between MP I-2.13 and MP I-23 (NITU Line) issued by the Surface Transportation Board (Board) in this proceeding. USR intends to buy and operate the NITU Line as a common carrier if given the authority to do so by the Board.

4. USR has sufficient financing to purchase and operate the NITU Line. It presently has a line of credit that would more than cover the value of the NITU Line in paragraph 6.

5. USR is a Class III, short line railroad operator. USR is also growing its presence in other markets by providing a variety of rail logistics services: transloading, private industrial rail car switching, track maintenance services, rail car repair, and rail car storage.

6. By analogy, pursuant to the “preliminary financial responsibility” provision in 49 C.F.R. § 1152.27(c)(1)(ii) for offers of financial assistance under 49 U.S.C. § 10904, USR meets this requirement. USR has in place a quote from Nottingham Rail Consulting for the delivery of random lengths of rail at a price of \$330.00 per gross ton dated March 22, 2019. Based upon this scrap price per ton times 132 short tons times 20.87 miles of rail, the scrap value of the NITU Line is \$909,097.00. The additional sum pursuant to 49 C.F.R. § 1152(c)(1)(ii) of \$4,000 times 20.87 is \$83,480.00 times 2 equals \$166,960.00. The total preliminary financial responsibility is \$1,076,057.00 ($\$909,097.00 + \$166,960.00 = \$1,076,057.00$). As noted above, USR has monies available through a line of credit in excess of that amount to pay the purchase price.

7. Moreover, there is a need for rail service on the Line. Crown Technology, Inc. (“Crown”), Stone Spectrum (“Stone”), and The Quikrete Companies (“Quikrete”) have filed comments in this proceeding expressing a need for rail service on the NITU Line. Crown and Quikrete are former shippers on the Line. Crown has a private sidetrack to enable rail transportation and needs 1-2 car loads of rail service per week. Quikrete has buildings on both sides of the Line and needs 5-10 car loads of rail service per day. Stone stated a need for 100+ railcars of service per year. USR is ready to operate the NITU Line and handle this need for rail service once it obtains proper authority from the Board. This amount of rail service will provide ample revenue for a financially healthy and profitable short line railroad.

8. Moreover, USR could operate an excursion train service on the NITU Line that has made approximately \$705,000 per year in gross revenue in the past. In addition, First Transit has agreed to work with USR to provide interstate passenger rail service, eventually connecting to Amtrak at Union Station in Indianapolis, Ind., if the Board gives authority for USR to purchase the NITU Line.

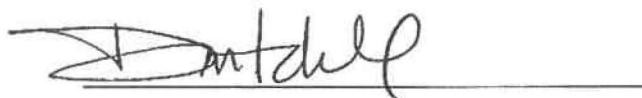
9. Removal of the track and other rail assets on or other interference with the NITU Line now would cause irreparable harm to USR because reactivation of the Line would become cost prohibitive if Petitioners are permitted to take this action. The finalization of the trails use process and removal of the track is imminent as the Petitioners have obtained three Notices of Interim Trail Use that make up the NITU Line in this proceeding and reached a Trails Use Agreement with Petitioner Fishers. The Fishers Trails Use Agreement provides that Petitioners intend to remove all railroad track and other rail assets on the NITU Line. Moreover, based on information and belief, the State of Indiana Department of Transportation intends to lower an overpass over I-465 that runs above the NITU Line if a trail is put in place to the point that rail traffic would not be able to pass. Calculation of monetary damages from the removal of the track or other freight rail interference on the NITU Line are hard to measure because of the new nature of this business. If the track and rail assets remain in place while USR pursues the proper avenue for the purchase and operation of the NITU Line at the Board, nobody would be harmed and the reactivation of common carrier freight rail service could be realized. In addition, USR has no objection to and even supports a trail alongside the reactivated rail line. This type of arrangement is commonplace across the United States and would be possible here. Hoosier Rails to Trails Council (“HRTTC”) supports this rail/trail arrangement on the NITU Line and has offered to work with USR to turn it into a reality. Therefore, both sides of this argument could have what they want without any harm to the public interest.

10. The NITU Line has been in a suspended state for over 26 years and waiting a few more months to review whether reactivation of rail service is permissible under the Board’s regulations would not hurt anyone.

VERIFICATION

I, Danielle Mitchell, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on March 29, 2019.

A handwritten signature in black ink, appearing to read 'Danielle Mitchell', is written over a horizontal line.

Danielle Mitchell

EXHIBIT B

R011419C

**A RESOLUTION OF THE CITY OF FISHERS BOARD OF PUBLIC WORKS &
SAFETY APPROVING A LICENSE AGREEMENT TO OPERATE A CERTAIN
PORTION OF THE NICKEL PLATE TRAIL PURSUANT
TO THE NATIONAL TRAILS SYSTEM ACT**

WHEREAS, on or around November 9, 1994, the Town of Fishers, which transitioned into a city on January 1, 2015 ("Fishers") and the City of Noblesville ("Noblesville") jointly purchased 37.54 miles of real property commonly known as the Nickel Plate Railroad that extends from Tipton to Indianapolis ("Real Estate");

WHEREAS, Fishers and Noblesville later allowed Hamilton County, Indiana ("County") to purchase a one third (1/3) interest in the Real Estate which resulted in Fishers, Noblesville and the County each owning an equal one third (1/3) interest in the Real Estate;

WHEREAS, the Hoosier Heritage Port Authority ("HHPA") was created in 1994, when Noblesville and Fishers passed identical ordinances establishing the port authority, and was later expanded to include the County;

WHEREAS, the HHPA was created to protect and preserve the existence of the Real Estate in perpetuity for such uses that may benefit the citizens of Noblesville, Fishers, and the County, including, but not limited to, recreational, transportation, and tourism purposes;

WHEREAS, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) ("Trails Act"), the Real Estate can be utilized as a linear recreational trail, remaining within the interstate commerce network and subject to federal jurisdiction under interim trails use, 49 C.F.R. §1152.29 ("Interim Trails Use");

WHEREAS, pursuant to Interim Trails Use, the Real Estate shall be preserved ("railbanked") for potential future restoration of common carrier service, but "trails-use status" allows the corridor to be used as a linear recreational resource, consistent with the Rail Transportation Policy of 49 U.S.C. §10101 ("Rail Policy");

WHEREAS, on or around July 31, 2017, the Owners approved railbanking the Real Estate in accordance with and pursuant to the Trails Act and directed Fishers to take any and all legal action necessary to railbank the Real Estate, including but not limited to filing the applicable petition(s) with the Surface Transportation Board ("STB"), and to be responsible for the costs thereof;

WHEREAS, on or around August 1, 2017, the Owners filed a petition to railbank the Real Estate with the STB, STB Docket No. FD 36137;

WHEREAS, on or around May 31, 2018, the STB held that the Owners may pursue rail banking the Real Estate under 16 U.S.C. §1247(d) and 49 C.F.R. §1152.29 without the need for any revocation authority from the STB;

WHEREAS, on or around June 8, 2018, Fishers (in its individual capacity as a trail sponsor) and Owners jointly filed a request for issuance of a notice of interim trails use ("NITU") to allow negotiations of a rail banking arrangement for an approximately 5-mile portion of the Real Estate within Fishers, STB Docket No. AB-290 (Sub-No. 117X);

WHEREAS, on or around December 21, 2018, the STB tendered an NITU to Fishers;

WHEREAS, to facilitate Interim Trails Use, the Owners have decided to (a) remove trackage and other rail assets from approximately milepost I-23 in Noblesville, Indiana to milepost I-2.13 in Indianapolis, Indiana ("Trail Path"), (b) repair crossings along the Trail Path, and (c) liquidate the remaining rail assets;

WHEREAS, Owners, acting by and through the HHPA, and Fishers (in its individual capacity as a trail sponsor) now desire to memorialize a trails-use agreement consistent with the Trails Act & Rail Policy ("Interim Trails Use Agreement") as more particularly described in Exhibit A, attached hereto and incorporated herein; and

NOW THEREFORE be it resolved by the City of Fishers Board of Public Works & Safety meeting in regular session as follows:

- Section 1.** The City of Fishers Board of Public Works & Safety hereby approves the Interim Trails Use Agreement in substantially similar form as Exhibit A, attached hereto and incorporated herein.
- Section 2.** The City of Fishers Board of Public Works & Safety hereby designates the Mayor to execute the Interim Trails Use Agreement and all ancillary documents necessary to effectuate its intent.
- Section 3.** This Resolution shall be of full force and effect from and upon its adoption.

SO RESOLVED BY THE CITY OF FISHERS BOARD OF PUBLIC WORKS & SAFETY
THIS 14TH DAY OF JANUARY, 2019.

2011419C

YAY

NAY

ABSTAIN

	Scott Fadness, Chairman		
	Jeff Lantz, Member		
	Jason Meyer, Member		

ATTEST:


Jennifer L. Kehl, City Clerk

DATE:

January 14, 2018

This instrument prepared by: Christopher P. Greisl, City Attorney, City of Fishers, Hamilton County, Indiana,
One Municipal Drive, Fishers, Indiana, 46038

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in
this document, unless required by law." /s/ Christopher P. Greisl



EXHIBIT A

INTERIM TRAILS USE AGREEMENT

**LICENSE AGREEMENT BY AND AMONG THE HOOSIER HERITAGE PORT
AUTHORITY AND THE CITY OF FISHERS (IN ITS INDIVIDUAL CAPACITY AS A
TRAIL SPONSOR) TO OPERATE A CERTAIN PORTION OF THE NICKEL PLATE
TRAIL PURSUANT TO THE NATIONAL TRAILS SYSTEM ACT**

This LICENSE AGREEMENT ("License") is entered into this 14 day of January, 2019 ("Effective Date") by and between the Owners of the Nickel Plate Railroad, acting by and through the Hoosier Heritage Port Authority ("HHPA"), a body corporate and politic and operating pursuant to Ind. Code §8-10-5 *et seq.*, and the City of Fishers (in its individual capacity as a trail operator and hereinafter referred to as "Trail Sponsor") pursuant to the National Trails System Act as follows:

RECITALS

WHEREAS, on or around November 9, 1994, the City of Noblesville ("Noblesville") and the Town of Fishers, which transitioned to a city on January 1, 2015 in accordance with Indiana law ("Fishers") jointly purchased 37.54 miles of real property commonly known as the Nickel Plate Railroad that extends from Tipton to Indianapolis ("Real Estate");

WHEREAS, Fishers and Noblesville later allowed Hamilton County (the "County") to purchase a one third (1/3) interest in the Real Estate which resulted in Fishers, Noblesville and the County each owning an equal one third (1/3) interest in the Real Estate (Fishers, Noblesville, and the County are hereinafter collectively referred to as the "Owners") and;

WHEREAS, the Hoosier Heritage Port Authority ("HHPA") was created in 1994, when Noblesville and Fishers passed identical ordinances establishing the port authority, and was later expanded to include the County;

WHEREAS, the HHPA was created to protect and preserve the existence of the Real Estate in perpetuity for such uses that may benefit the citizens of Noblesville, Fishers, and the County, including, but not limited to, recreational, transportation, and tourism purposes;

WHEREAS, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) ("Trails Act"), the Real Estate can be utilized as a linear recreational trail, remaining within the interstate commerce network and subject to federal jurisdiction under interim trails use, 49 C.F.R. §1152.29 ("Interim Trails Use");

WHEREAS, pursuant to Interim Trails Use, the Real Estate shall be preserved ("railbanked") for potential future restoration of common carrier service, but "trails-use status" allows the corridor to be used as a linear recreational resource, consistent with the Rail Transportation Policy of 49 U.S.C. §10101 ("Rail Policy");

WHEREAS, on or around July 31, 2017, the Owners approved railbanking the Real Estate in accordance with and pursuant to the Trails Act and directed Fishers to take any and all legal action necessary to railbank the Real Estate, including but not limited to filing the applicable

petition(s) with the Surface Transportation Board ("STB"), and to be responsible for the costs thereof;

WHEREAS, on or around August 1, 2017, the Owners filed a petition to railbank the Real Estate with the STB, STB Docket No. FD 36137;

WHEREAS, on or around May 31, 2018, the STB held that the Owners may pursue rail banking the Real Estate under 16 U.S.C. §1247(d) and 49 C.F.R. §1152.29 without the need for any revocation authority from the STB;

WHEREAS, on or around June 8, 2018, Trail Sponsor and Owners jointly filed a request for issuance of a notice of interim trails use ("NITU") to allow negotiations of a rail banking arrangement for an approximately 5-mile portion of the Real Estate within Fishers, STB Docket No. AB-290 (Sub-No. 117X);

WHEREAS, on or around December 21, 2018, the STB tendered an NITU to Trail Sponsor;

WHEREAS, to facilitate Interim Trails Use, the Owners and HHPA have decided to (a) remove trackage and other rail assets from approximately milepost I-23 in Noblesville, Indiana to milepost I-2.13 in Indianapolis, Indiana ("Trail Path"), (b) repair crossings along the Trail Path, and (c) liquidate the remaining rail assets; and

WHEREAS, Owners, acting by and through the HHPA, and Trail Sponsor now desire to memorialize a trails-use agreement consistent with the Trails Act & Rail Policy ("Interim Trails Use Agreement").

Now therefore, in consideration of the mutual covenants and other good and valuable consideration contained herein, Owners and Trail Sponsor hereby agree as follows:

ARTICLE I. RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this License and are hereby incorporated into and made a part of this License as though they were fully set forth in this Article I.

ARTICLE II. TRAILS USE

In consideration of and as a material inducement for Trail Sponsor fulfilling its obligations contained herein, Owners and HHPA hereby grant to Trail Sponsor the right to construct upon and use the Premises as a multi-use, pedestrian, recreational and transportation trail (the "Permitted Use"), subject to the restrictions included herein. Trail Sponsor shall design, construct and use the Premises, at its sole cost and expense, for the Permitted Use consistent with the Laws and for no other purpose. For purposes of this License, the "Laws" shall be defined as all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations,

guidelines, judgments, orders, and/or decrees, including without limitation applicable zoning laws and the Trails Act, including regulations promulgated thereunder, and the STB's Decision and NITU or Abandonment, STB Docket No. AB-290 (Sub-No. 117X).

ARTICLE III. LICENSED PREMISES

The premises subject to this License is approximately five (5) miles of railroad right-of-way of varying width from approximately milepost I-14 (immediately north of the Real Estate's crossing of E. 96th Street) Fishers, Hamilton County, Indiana to approximately milepost I-19 (immediately south of the Real Estate's crossing of E. 146th Street) Fishers, Hamilton County, Indiana, and includes all bridges, tunnels, culverts and other appurtenances associated therewith, which premises is depicted in Exhibit A, attached hereto and incorporated herein ("Premises").

ARTICLE IV. OWNERS' RESERVED RIGHTS

Owners, for itself and the HHPA, reserve all rights to (A) manage, amend, cancel or otherwise alter, and retain any proceeds of, any and all existing easements, leases, licenses or other agreements for the installation, operation, use or maintenance of utility facilities, and their support structures on, over or under the Premises, including, but not limited to fiber optic cables, communications or information transmission systems, or utility pipelines, wire lines or other service facilities (collectively, the "Facilities"); (B) current and future mineral rights in and about the Premises, including but, not limited to oil, coal, gas, and any other ore or minerals on, in, and under the Premises and the right to extract the same; and (C) enter the Premises at such times as will not unreasonably interfere with Trail Sponsor's use of the Premises or as needed in emergency situations. Moreover, Trail Sponsor specifically acknowledges and agrees that Owners and HHPA will scrap and remove the rail infrastructure and that such removal shall exclusively inure to the benefit of the Owners.

Any right exercised by Owners or HHPA under this Article IV shall not unduly interfere with or impede Trail Sponsor's Permitted Use of the Premises. For purposes of this License "unduly interfere" shall mean an interference that causes Trail Sponsor to incur costs or that limits use of the Premises or a portion thereof for more than three (3) consecutive days or more than fifteen (15) days within any one hundred eighty (180) day period, without first obtaining Trail Sponsor's prior written approval. Moreover, prior to issuing a new easement or allowing any new Facilities to be placed in an existing easement at and about the Premises, Owners shall cause the HHPA to seek the written approval of Trail Sponsor, which approval shall not be unreasonably withheld.

Notwithstanding the foregoing or anything herein contained to the contrary, this Article shall not be construed to prevent Trail Sponsor from soliciting and accepting donations or otherwise raising funds to support the Permitted Use in accordance with this License.

ARTICLE V. TERM

Subject to Early Termination, as defined in Article XIV herein, this License shall remain in full force and effect for twenty-five (25) years from the Effective Date (the "Initial Term") and

shall automatically renew for one (1) additional twenty-five (25) year term (the "Renewal Term"). For purposes of this License, the Initial Term and the Renewal Term shall be jointly defined as the "Term".

ARTICLE VI. RENT & OTHER ASSESSMENTS

Section 6.01. Rent. Annually, by or before January 1st of each year of the Term, Trail Sponsor shall pay to HHPA Three and no/100 Dollars (\$3.00) for use of the Premises for the Permitted Use pursuant to this License.

Section 6.02. Taxes. Trail Sponsor shall pay all real estate and personal property taxes, special assessments and other charges assessed against and due on the Premises (except income taxes related to revenue received by Owners or HHPA pursuant to its reservation of rights set forth in Article IV above), levied upon, assessed) ("Taxes").

ARTICLE VII. SURVEY **[intentionally omitted]**

ARTICLE VIII. REACTIVATION OF RAIL SERVICE

At all times herein, this License shall be subject to reactivation of rail service pursuant to the Trails Act and the STB Decision as further described below:

Section 8.01. Owners' Reactivation. The Owners retain the right to reactivate railroad service over all or part of the Premises, which right may be exercised, in whole or in part, in the Owners' sole discretion and upon unanimous consent of the Owners. Trail Sponsor expressly acknowledges that its use of the Premises is subject to the future reactivation of rail service on and over all or a part of the Premises by the Owners or as otherwise set forth below.

Section 8.02. In the event: (1) the STB, or any other entity of the United States government or by order of any court, compels the Owners to reactivate rail service on the Premises, or a portion thereof, or (2) the Owners, its successor or assigns, voluntarily takes steps to reactivate rail service by seeking to vacate the NITU issued in the STB Decision, and the STB approves the same; or (3) a party other than the Owners, its successors or assigns, seeks to reactivate rail service by petitioning the STB to vacate the NITU, and the STB approves the same, the Owners shall inform Trail Sponsor as soon as the Owners become aware of any such intention to reactivate and further provide at least sixty (60) days (or longer if such notice can reasonably be provided depending on the transaction contemplated) advance notice of the date on which this License shall terminate.

Section 8.03. In the event of reactivation of rail service, Trail Sponsor and Owners shall negotiate in good faith and mutually determine the procedure for and cost allocation associated with removing any improvements made by Trail Sponsor to the Premises.

ARTICLE IX. CONDITION OF PREMISES

The Premises licensed hereunder is licensed "AS IS, WHERE IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF TITLE, MERCHANTABILITY, HABITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Nothing in this License shall act as or be deemed to act as a warranty, guaranty or representation of the quality or quantity of Owners' or HHPA's title in and to any particular portion of the Premises occupied, used or enjoyed by Trail Sponsor. The rights granted to Trail Sponsor do not extend beyond and shall be strictly limited by such right, title or interest of Owners or HHPA in the Premises. It is expressly understood that the Owners and HHPA do not warrant title to any portion of the Premises, and Trail Sponsor hereby accepts the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights or interests in and to the Premises, and all leases, licenses and easements or other interests previously granted to or reserved by others therein.

Trail Sponsor agrees that this License does not convey or confer a property right in the Premises, including, without limitation, a leasehold interest, and it shall not have and hereby completely and absolutely, waives its right to any claim against the Owners and HHPA for damages or any other legal or equitable relief on account of any deficiencies in title to the Premises.

ARTICLE X. PRESERVATION OF PREMISES - ENVIRONMENTAL INDEMNITY

Trail Sponsor shall not create or cause, as applicable: (a) any nuisance to exist in or about the Premises that materially and adversely affects the Owners' or HHPA's right, title and reserved use of the Premises; or (b) any unsightly condition or any noxious or objectionable dust, gases, odors, or noises to exist on, or to emanate from, the Premises that materially and adversely affects the operation or lawful intended use of the Premises. Further, Trail Sponsor shall not cause the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Premises, or the transportation to or from the Premises of any Hazardous Substances, except as necessary and appropriate to fulfill the purposes of this License, in which case such use, generation, release, manufacture, refining, production, processing, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws. Trail Sponsor shall immediately (y) notify Owners and HHPA of (i) any known violation by it of any Environmental Laws on, under or about the Premises, or (ii) the known presence or suspected presence of any Hazardous Substances on, under or about the Premises, and (z) deliver to the Owners and HHPA a copy of any notice received by it relating to (y)(i) and (y)(ii) above received from any source. Trail Sponsor shall indemnify the Owners and HHPA from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs incurred by Owners and/or HHPA in connection with any breach by Trail Sponsor of its obligations under this Section. Subject to strict compliance with the Environmental Laws, nothing herein is intended to prohibit Trail Sponsor from improving the Premises as a recreational trail.

For purposes of this License, "Environmental Laws" shall mean all present or future

federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Premises, and the rules and regulations of the Federal Environmental Protection Agency and any other federal, state or municipal agency or governmental board or governmental entity having jurisdiction over the Premises; and "Hazardous Substance" shall mean those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "solid waste" or "infectious waste" under Environmental Laws and petroleum products.

ARTICLE XI. TRAIL CROSSINGS

Trail Sponsor shall assume full responsibility for the management, maintenance and operation of any and all road and highway grade crossings (public or private) on the Premises, including the installation and maintenance of crossing warning devices, which devices shall be installed and maintained in compliance with applicable state, county or local laws, rules or regulations. Trail Sponsor may install or cause to be installed a new trail-roadway crossing on, under, or over the Premises and be solely responsible for any risks, costs, and expenses incurred (including attorneys' fees) in any hearings, proceedings or other actions regarding the construction of such crossing. In the event Trail Sponsor desires to remove any public trail-roadway crossing, Trail Sponsor shall be responsible for all costs incurred by Owners and HHPA in petitioning or otherwise working with the applicable road authority for such removal.

Owners and HHPA assign to Trail Sponsor, and Trail Sponsor hereby assumes all duties and obligations of the Owners and HHPA with respect to existing (identified at the time of execution or thereafter) or future private crossing agreements on and over the Premises. Trail Sponsor may remove any private crossings where such removal is not prohibited by contract or by law.

Trail Sponsor shall be responsible for any legal proceedings against a third party in which that party is responsible for damage to a road or highway crossing (public or private) on the Premises.

ARTICLE XII. LIABILITY

In consideration and as a material inducement for HHPA entering into this License, Trail Sponsor assumes all financial, managerial, operational and legal responsibility, control and risk of loss associated with its use of the Premises, including, without limitation, responsibility for compliance with the Laws; except that Owner and HHPA shall not be responsible for those uses of the Premises specifically reserved to the Owners and HHPA in Article IV. The provisions of this Article XII shall survive the expiration or termination of this License.

Section 12.01 Owners' Indemnity. Trail Sponsor hereby releases, and agrees to indemnify, defend and hold harmless, the Owners, the HHPA, and their respective principals, officers, directors, employees, contractors and agents (collectively referred to in this section as "Indemnified Parties"), from and against any and all claims and/or liability (in law or in equity), and all costs (including attorneys' fees), damages, fines or other expenses related to such claims and liabilities ("Losses") relating in any way to Trail Sponsor's use of and presence on the Premises, including, but not limited to Losses for: (i) injury to or death of persons or damage to property arising from, out of or related to the use of the Premises by Trail Sponsor, (ii) any

obligations incurred by Trail Sponsor in financing or developing a recreational trail, (iii) any taxes or assessments that are levied or assessed against the Premises and area actually or (iv) challenges to title or condition of title to the Premises or Indemnified Parties' grant of Occupancy hereunder. Trail Sponsor shall notify Indemnified Parties of any claim or lawsuit made against it. At Trail Sponsor's request, Indemnified Parties will provide advice and consultation to Trail Sponsor to assist in the defense and/or settlement of any such claim. Trail Sponsor shall assure that the Indemnified Parties are a party to any release agreement Trail Sponsor secures with any claimant.

Section 12.02 Trail Sponsor's Indemnity. Owners and HHPA, on behalf of itself and its principals, officers, directors, employees, contractors and agents, shall release and indemnify, defend and hold harmless Trail Sponsor and its officers, directors, employees, contractors and agents, from and against any and all claims and/or legal liability (at law or in equity), and costs (including attorneys' fees), fines or other expenses arising from the use of the Premises for matters reserved by Owners in Article IV hereof. Trail Sponsor shall promptly notify Owners and HHPA in writing of any notification received by Trail Sponsor alleging any violation of any Laws.

ARTICLE XIII. INSURANCE

Trail Sponsor shall, at its sole cost and expense, procure and maintain at all times during the Term the policies of insurance described on Exhibit B. Each such policy shall: (a) be written by a company reasonably acceptable to HHPA; and (b) provide that it shall not be modified or canceled without written notice to HHPA at least thirty (30) days in advance. The policy of general liability insurance required by this Section to be maintained by Trail Sponsor shall name Owners and HHPA as additional insureds. Trail Sponsor shall deliver to HHPA certificates of the insurance policies required by this Section.

ARTICLE XIV. EARLY TERMINATION

Section 14.01. Termination by HHPA. Subject to the Cure Period, if applicable, this License may be terminated by HHPA prior to conclusion of the Term as follows:

- a. Upon ninety (90) days written notice of Trail Sponsor's failure to maintain the Premises consistent with the terms of this License and generally acceptable standards for multi-use, pedestrian trails in the State of Indiana;
- b. Immediately, for failure to: (1) maintain required insurance, or (2) assignment in violation of this License;
- c. Upon ten day written notice of Trail Sponsor's abandonment of the Premises for a period of more than one hundred eighty (180) consecutive days without prior, written approval of the Owners;
- d. Upon ninety (90) days written notice for Trail Sponsor's failure to comply with all other provisions of this License; and
- e. As set forth in Article VIII, for reactivation of rail service.

(In any instance, the "Early Termination"). The Cure Period shall not apply to Subsections 14.01(b), (c) or (e) above.

For purposes of this License, "Cure Period" shall mean a period of: (a) ten (10) days after written notice of such default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this License to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than ninety (90) days after the date of the default.

Section 14.02. Rights and Remedies. Upon early termination as a result of Trail Sponsor's default under this License, Owners and HHPA may seek all remedies available to it in law and equity, including attorneys' fees and costs related thereto, take possession of the Premises and take whatever reasonable steps are necessary to terminate Trail Sponsor's use of the Premises, including, without limitation requiring Trail Sponsor to remove all improvements made to the Premises and restore the Premises and other affected property of Owners and HHPA to substantially the same functional or operational condition existing immediately prior to Trail Sponsor's construction of such improvements or as otherwise agreed by HHPA and Owners. If, following written request of the Owners and HHPA, Trail Sponsor fails to remove its improvements and restore the Premises and other affected property as provided in the preceding sentence, Trail Sponsor shall be deemed to have abandoned its property in place, in which event such improvements shall become the exclusive property of Owners and HHPA, for purposes of resale, use or operation by Owners and HHPA, in any manner and for any purpose Owners and HHPA deem appropriate, in its sole discretion. Owners and HHPA shall also have the right to remove such property and restore the Premises, and all costs incurred by Owners and HHPA in such removal and restoration shall be immediately due and payable by Trail Sponsor to Owners and HHPA upon written demand (the "Self-Help Cost"). This obligation of Trail Sponsor shall survive the termination of this License.

ARTICLE XV. MAINTENANCE, REPAIR, OR IMPROVEMENT

Trail Sponsor shall be exclusively responsible for maintaining, operating repairing, improving and using the Premises for the Permitted Use, including, without limitation, clearing or removing trees, shrubs, plants, ice, snow or debris from the Premises, providing necessary personnel at and about the Premises, ensuring that the Premises are used and operated in a safe condition and otherwise keeping at all times during the Term the Premises in good condition and repair, all of which shall be completed at Trail Sponsor's sole risk, cost and expense.

ARTICLE XVI. LIENS, RELEASE AND SELF-HELP

Trail Sponsor shall not permit any mortgage, pledge, security interest, lien or encumbrance, including, without limitation, tax liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, operation, repair, maintenance, replacement or removal of any improvements related to the Permitted Use (collectively, "Liens or Encumbrances"), to be established or remain against the Premises or any other property of the Owners. In the event that any portion of Owners' and/or HHPA's property

becomes subject to any Lien or Encumbrance, Trail Sponsor agrees to pay, discharge, remove, or bond over the same within thirty (30) days of Trail Sponsor's receipt of notice that such Lien or Encumbrance has been recorded, filed or docketed against such Owners' and/or HHPA's property; provided, however, that if Trail Sponsor provides a bond or other security acceptable to Owners and HHPA for the payment and removal of such Lien or Encumbrance, Trail Sponsor shall have the right to challenge, at its sole expense, the validity and/or enforceability of any such Lien or Encumbrance.

If Trail Sponsor fails to comply with the preceding paragraph, Owners and HHPA are hereby authorized, but not obligated, to advance and pay such amount as Owners and HHPA shall, in their absolute subjective discretion, determine to be necessary to procure release of such Mechanics' Lien or take such other action that shall otherwise be necessary for the protection of Owners and HHPA and the Premises.

ARTICLE XVI. GENERAL CONDITIONS

Section 16.01 Interest. Trail Sponsor agrees that any monies advanced by Owners or HHPA pursuant to this License or by Owners' or HHPA's exercise of any right hereunder given shall be repaid by Trail Sponsor to Owners or HHPA, with interest thereon at four percent (4%) above the then prevailing prime rate which interest shall continue to accrue until the amount owed and interest are paid in full.

Section 16.02 Notice. Any notice required or permitted to be given by any party to this License shall be in writing, and shall be given (and deemed to have been given) when: (i) delivered in person to the other party; (ii) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (iii) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Trail Sponsor at 1 Municipal Drive, Fishers, Indiana 46038, Attn: Scott Fadness, Mayor, with a copies to: Chris Greisl, City Attorney, 1 Municipal Drive, Fishers, Indiana 46038 and Jennifer Messer (via email) at jennifermesserlaw@gmail.com; and to HHPA at Executive Director, 33 N 9th Street, Suite 215 Noblesville, IN 46060. Any party may change its address for notice from time to time by delivering notice to the other party as provided above.

Section 16.03 Authority. Each undersigned person executing this License on behalf of the HHPA and the Trail Sponsor represents and certifies that: (i) he or she has been empowered and authorized by all necessary action of the HHPA and the Trail Sponsor, to execute and deliver this License; (ii) he or she has full capacity, power, and authority to enter into and carry out this License; and (iii) the execution, delivery, and performance of this License duly have been authorized by Trail Sponsor and HHPA, respectively.

Section 16.04. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this License as a result of Force Majeure, then: (i) the party asserting Force Majeure shall deliver written notice to the other party; (ii) such observation, performance, or satisfaction shall be excused for the period of days that such observation,

performance, or satisfaction is delayed or prevented; and (iii) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

Section 16.05. Merger. All prior agreements, understandings, and commitments are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

Section 16.06. Indiana Tort Claims/Indemnification. Notwithstanding anything to the contrary contained herein, HHPA and Trail Sponsor hereby acknowledge that the other party's financial exposure for certain claims is limited by the Indiana Tort Claims Act, and HHPA's and Trail Sponsor's obligation to indemnify and save the other party, its officers, directors, agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code § 34-13-3-4, as amended.

Section 16.07. Assignment. Trail Sponsor may only assign this License with written approval from Owners and approval of STB.

Section 16.08. Miscellaneous. This License shall inure to the benefit of, and be binding upon, Trail Sponsor and HHPA, and their respective successors and assigns. This License may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This License shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this License shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Trail Sponsor waives, to the extent permitted under applicable law: (i) the right to a trial by jury; and (ii) any right Trail Sponsor may have to: (A) assert the doctrine of "forum non conveniens"; or (B) object to venue. This License may be modified only by a written agreement signed by Owners and Trail Sponsor. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this License shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this License are attached hereto and incorporated herein by reference. Time is of the essence in this License. If any provision of this License or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this License or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this License a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this License are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this License or the scope or content of any of its provisions. Nothing contained in this License shall be construed to create a partnership or joint venture between or among HHPA, Owners, or Trail Sponsor or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the

Office Site is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

[SIGNATURE ON FOLLOWING PAGE]

Roll 417C

IN WITNESS WHEREOF, the parties hereto represent and warrant that each has the necessary authority to enter into this License and bind the respective parties to the terms and conditions hereof and have executed this License as of the dates set forth below.

**TRAIL SPONSOR
CITY OF FISHERS, INDIANA**

By: _____

Scott Fadness, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Scott Fadness, personally known to me to be the Mayor of the City of Fishers, Indiana, and acknowledged the execution of the foregoing License for and on behalf of said City.

WITNESS my hand and notarial seal this 14 day of January, 2019.

Chaka Coleman

Written Signature

Chaka Coleman

Printed Signature

**Chaka Coleman
Notary Public Seal
State of Indiana
Marion County**

**My Commission Expires June 26, 2026
Commission Number: NP0714751**

NOTARY PUBLIC

HHPA
HOOSIER HERITAGE PORT
AUTHORITY

By: _____
David George, President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared David George, personally known to me to be the President of the **Hoosier Heritage Port Authority**, and acknowledged the execution of the foregoing License for and on behalf of said City.

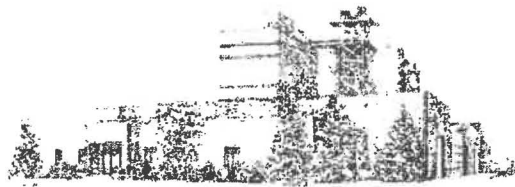
WITNESS my hand and notarial seal this ____ day of _____, 2019.

Written Signature

Printed Signature

NOTARY PUBLIC

EXHIBIT C



October 4, 2017

FD-36137

ATTN: Mr. Michael Obergfell
Hoosier Heritage Port Authority
33 N 9th St., Suite 215
Noblesville, Indiana 46060

244467

ENTERED
Office of Proceedings
October 5, 2017
Part of
Public Record

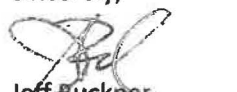
RE: Request for Rail Freight Service on "Nickel Plate" Railroad Corridor

Dear Mr. Obergfell:

Crown Technology is one of the nation's leading manufacturers of specialized chemicals for acid additives, corrosion inhibitors and the recovery and reclamation of ferrous sulfate from the acid pickling of steel. The company also produces a variety of other additional industrial chemicals at its 85,000-square foot plant in Indianapolis. Our inbound and outbound materials move in bulk. The chemical production and blending capacity is over 1.1 million gallons annually and is currently limited by over the road truckload availability. Our company serves both national and international markets. A continuing impediment to growth is the lack of access to rail transportation and the competitive advantages it offers. Rail access guided the decision to locate our facility near the "Nickel Plate" railroad corridor from the beginning (in 1983). The company once shipped by rail and still retains a private sidetrack spur. We understood the Hoosier Heritage Port Authority was created, like other Port Authorities, to preserve freight service. It is also our understanding that four individual rail operators submitted proposals to the Port Authority in June 2017, which all included options for freight rail service. We estimate that, at current annual volumes of our principal products, we could receive bulk liquids by tank car and receive and ship some different dry material by container and boxcar.

Although it would take some time to shift traffic to rail while our customers and vendors adjust supply chains, we could begin moving some carloads by rail within 9 months. Therefore, we formally request a meeting with the Port Authority and railroad owners to discuss options and rates for freight rail service to our facility, located at 7513 E 96th St. Indianapolis, Indiana 46256.

Sincerely,


Jeff Buckner
Vice-President

cc: Attorney for the City of Fishers, Indiana; City of Noblesville, Indiana; Hamilton County, Indiana; and the Surface Transportation Board

244448

ENTERED
Office of Proceedings
October 2, 2017
Part of
Public Record

STONE SPECTRUM
8585 East 249th Street
Arcadia, IN 46030
info@stonespectrum.com
Tel: 317-984-1400
Fax: 317-984-3655



October 2, 2017

Ann D. Begeman | Acting Chairman
Office of Proceedings - Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024
RE: Nickel Plate Railroad Corridor | FD-36137-0

Ms. Begeman,

Stone spectrum is a company located in Arcadia, Indiana which receives bulk inbound stone product shipments for creating countertops, fountains, planters, monuments, tile, statuary, and much more. We are stone experts in many areas of the industry and provide products from all around the world. Our location currently has rail sidings that would make it easy to resume freight rail service. Freight service would provide a significant cost savings over our current truck load shipments. We desire to begin shifting some of our inbound freight traffic to the rail at the earliest possible opportunity. We've been under the impression that rail freight service would be restored at some point in the near future; especially after the Hoosier Heritage Port Authority issued a request for proposal and received multiple bids to offer freight service. Unfortunately, none of the freight providers were chosen, but rather, an operator that only intends to use a small portion of the line for excursion train service was chosen. We've been attempting to establish freight service for nearly four years, with no success. The most likely movement by rail would be bulk granite and marble slabs. Our annual volume and frequency of shipments would be 100 + carloads of granite, marble, and other stones, brought in by boxcar. We do not wish to see this railroad converted to a trail and ask that the Surface Transportation Board pass a ruling in accordance with re-establishing and expanding freight service along the line. The permanent loss of rail freight service would be a detriment to the future expansion and cost savings plans of our company as well as many others along the line.

Sincerely,

Josh Spencer
Director of Operations

*I certify that these comments have been provided to the Applicant's Attorney of Record via email.
/s/ Josh Spencer*

cc: Attorney for City of Fishers, Indiana; City of Noblesville, Indiana; Hamilton County, Indiana; and the Surface Transportation Board



June 6, 2018

Ms. Danielle Hall Mitchell
President
U.S. Rail Holdings
7846 W. Central Avenue
Toledo, OH 43617

Dear Ms. Mitchell,

In light of the ongoing public miscommunications regarding the status of the rail that runs adjacent to our property here in Indianapolis, I am writing to express interest on behalf of Crown Technology, Inc. in finding out everything that still might be possible with regard to rail freight being serviced on this line. We would be interested in meeting with you to see if it makes economic sense and is logistically a reality. It may offer us a competitive advantage in the marketplace.

Crown maintains an industrial spur on the east side of the rail just south of 96th street. We used to ship by rail and we still ship via rail containers weekly (125 loads this last year June 2017 – May 2018). As we stated in our letter to the Hoosier Heritage Port Authority and the STB earlier this year, we are very interested in looking at rail freight on the line. With your assistance, we would like to continue looking at the volumes and commodities that could be railed. Shipping schedules, rate quotes and other transport information will be required for us to make any type of transition from road to eligible rail and according to the local newspapers here - apparently time is of the essence as the cities of Fishers and Noblesville recently announced “move ahead” plans to shut down the nine mile stretch of rail immediately north of our property (effectively eliminating any northbound rail service for Crown).

Please contact me at your earliest convenience.

Sincerely,



Jeff Buckner
VP-Finance
Crown Technology, Inc.
(317) 863-6251
jbuckner@crowntech.com



244568

QUIKRETE-Indianapolis

3100 East 56th Street
Indianapolis, IN 46220
(317) 251-2281
(317) 479-3308 Fax

ENTERED
Office of Proceedings
October 13, 2017
Part of
Public Record

October 6, 2017

Ann D. Begeman

Acting Chairman

Office of Proceedings /Surface Transportation Board

395 E Street, S.W., Room 1034

Washington, DC 20024

Re: Docket No. FD-36137-0

Dear Ms. Begeman,

Quikrete has been located on the Nickel Plate railroad since 1948. We are a family business and one of the largest manufacturers of concrete repair products in the United States. We have over 200 locations throughout the country. We have in the past brought in many of the material we use in the manufacturing of our products on this rail line. Gradually over the years due to service issues we stopped using the rail line. About 15 years ago we began using the railroad again. Had the service remained consistent we would still be using this service. In the past we brought in many 1000's of tons of Portland cement and raw materials, some prepackaged materials and empty bags.

We are currently move 50+ trucks in and out of our facility daily. This number could be greatly reduced if an active rail line with competitive rates were available.

The fair train has operated on this section of track for many years and has always been a fun and fantastic service for those attending the fair. The transportation Museum did a great job of educating the riding public about the history of the cars and engines on the track. Many children would never have been able to ride on a train if it were not for this service and the dedication of many volunteers who kept the museum trains running. It has truly been missed.

There has been a lot of talk about converting the line to a commuter rail or a walking / bike trail. We strongly suggest that neither of these happen. This rail runs through the middle of our business location since we have buildings on both sides of the tracks. We do not need uncontrolled vehicle or foot traffic moving through our property. If this were to occur we would have to seriously entertain moving our facility out of the area. This would not be good for our employees or the neighborhood.

Sincerely,

John Shank



EXHIBIT D

Chesapeake and Indiana Railroad

The **Chesapeake and Indiana Railroad** (reporting mark **CKIN**) is a **Class III short-line railroad** operating 33 miles (53 km) of rail line in northwestern **Indiana**. From the town of **La Crosse**, lines run northwest to the **Porter County** town of **Malden**, southeast to the **Starke County** towns of **English Lake** and **North Judson**, and northeast through **La Porte County** past **Thomaston** and **Hanna** to **Wellsboro**. The railroad is owned by the Town of North Judson and operated under lease by the **Indiana Boxcar Corporation**.

The Chesapeake and Indiana is mostly used for transporting grain from rural elevators to the mainline railroad systems. The railroad interchanges with Norfolk Southern at Thomaston and CSX at Wellsboro. The railroad moved only 700 cars on startup in 2004, having increased that to 3,000 cars by 2011, with growth expected in the coming years. When the railroad first started, the only connection with a class one was in Wellsboro, IN with the CSX. The C&I and NS soon build a connection in Thomaston to allow more cars per year and competitive shipping rates between the 2 class one's.

Rail tours are also operated on the C&I line by the **Hoosier Valley Railroad Museum**, starting in North Judson and running to English Lake.

Chesapeake and Indiana Railroad

Reporting mark	CKIN
Locale	Indiana
Dates of operation	2004–
Track gauge	4 ft 8½ in (1,435 mm) standard gauge
Headquarters	LaCrosse, Indiana

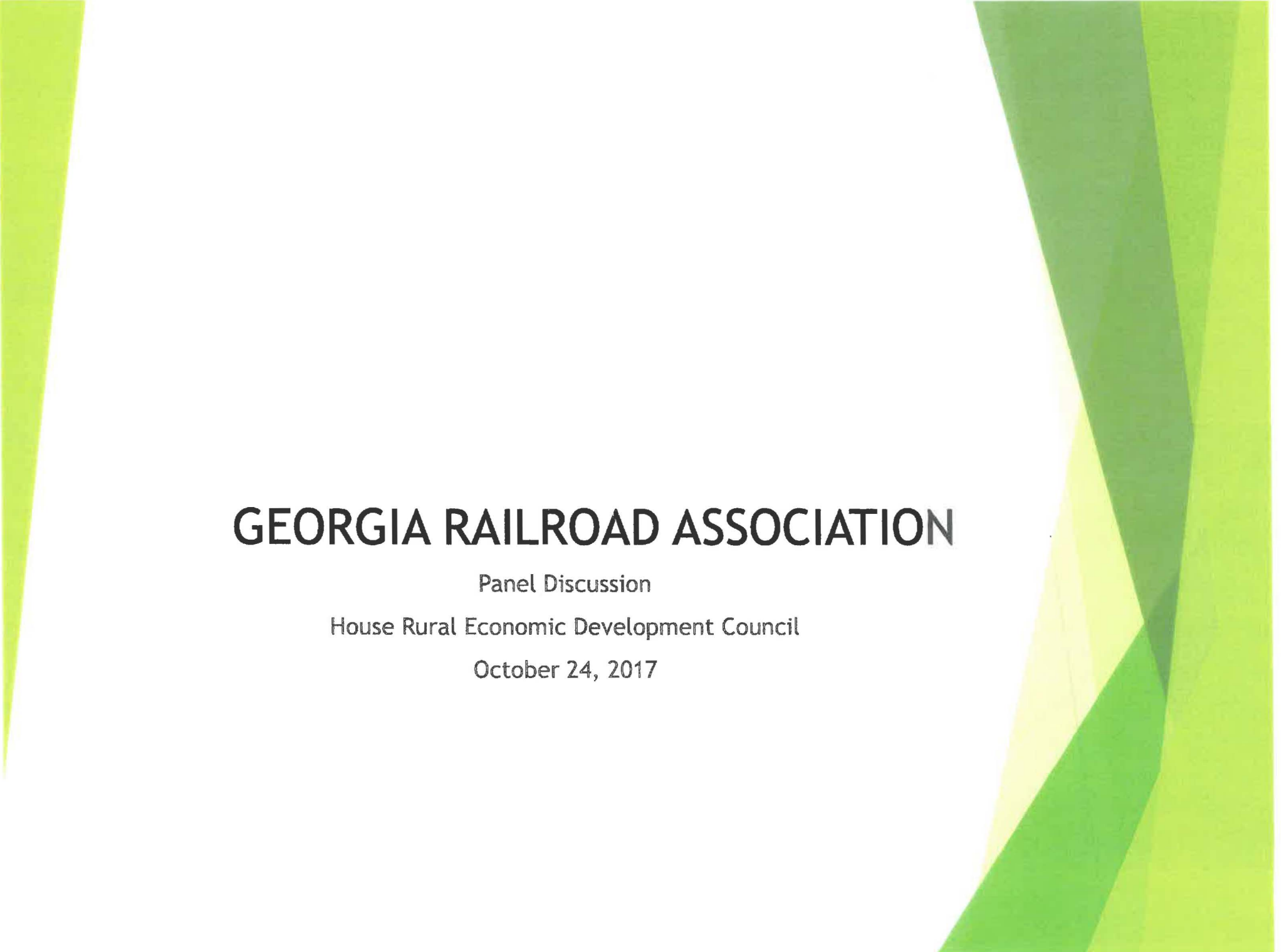
External links

- Chesapeake and Indiana Railroad (<https://web.archive.org/web/20110321142535/http://www.hoosiervalley.org/ckin/>)
- Chesapeake and Indiana Railroad at Indiana Boxcar (<https://web.archive.org/web/20150824181807/http://www.indianaboxcar.net/railroad/chesapeake.php>)

Retrieved from "https://en.wikipedia.org/w/index.php?title=Chesapeake_and_Indiana_Railroad&oldid=882401951"

This page was last edited on 8 February 2019, at 20:43 (UTC).

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GEORGIA RAILROAD ASSOCIATION

Panel Discussion

House Rural Economic Development Council

October 24, 2017

<http://www.georgiarailroad.org/gawoodlands.html>

Go

MAR JUL SEP

20

2007 2011 2014



About this capture

9 captures

1 Mar 2005 - 4 Mar 2016

Home | Contact

**GRA** GEORGIA RAILROAD
ASSOCIATION, INC.

GRA DIRECTORY

Georgia Woodlands Railroad

Principal Contact

Rob Anderson, Southern Division, GM
c/o Georgia & Florida Railway
1019 Coastline Avenue, Albany, GA 31705
256-547-9079
Cell: 256-613-6583
Fax: 866-365-8544
[\[email\]](#)

Main Address

210 Depot Street (PO Box 549)
Washington, GA 30673
706-678-3000
Fax: 706-678-2341
www.omnitrax.com



Company Officers

Gary Long, President, CEO (OmniTrax)
50 S. Steele Street, Denver, CO 80209
303-398-4500

Mike Ogborn, Managing Director (OmniTrax)
50 S. Steele Street, Denver, CO 80209
303-398-4500

Larry Bush, Senior Vice-President, CFO (OmniTrax)
50 S. Steele Street, Denver, CO 80209
303-398-4500

Stats

Counties of Operation: Wilkes, Warren, Taliaferro

Number of Employees in Georgia: 2

Freight Products: Woodchips, Wood Beams, Plastics, Butane

Total Annual Carloads: 570

Primary Connections: CSX Transportation

MARJULSEP

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▼ About this capture

9 captures

1 Mar 2005 - 4 Mar 2016

CONECUH VALLEY RAILWAY, L.L.C. (COEH)



INTRODUCTION

The Conecuh Valley Railway, L.L.C. (COEH) operates over 12 miles of track southwest from Troy to Goshen. COEH interchanges with CSXT at Troy and handles approximately 3,000 carloads per year. It handles mainly food and feed products, plastic, lead and vegetable oil.

HISTORY

Originally part of the Central of Georgia Railroad, the line was intended to run from Columbus, GA to Mobile, AL, but only progressed as far as Andalusia. It was known as the Southern Alabama Railroad Company (SUAB) from 1988 until it began operating as Conecuh Valley Railroad in October 2001. Genesee & Wyoming purchased the Conecuh Valley Railroad from RailAmerica in December 2012, one of 11 railroads it now owns in Alabama.

ALABAMA QUICK FACTS

State(s) of Operation

- Alabama

Miles of Track

- 14 miles

Stations Served (west to east)

- Goshen
- Troy

Connecting Railroads

- CSXT (Troy)

Major Commodities

- Food and feed products
- Plastic
- Lead
- Vegetable oil

Principal Businesses Served

- Wayne Farms
- K&W Plastics
- Anderson Peanuts

Annual Volumes

- 3,000 carloads

Equipment/Facilities/Capacities

- 3 locomotives (SW 1500, GP 18, GP 7)
- 100-car storage yard

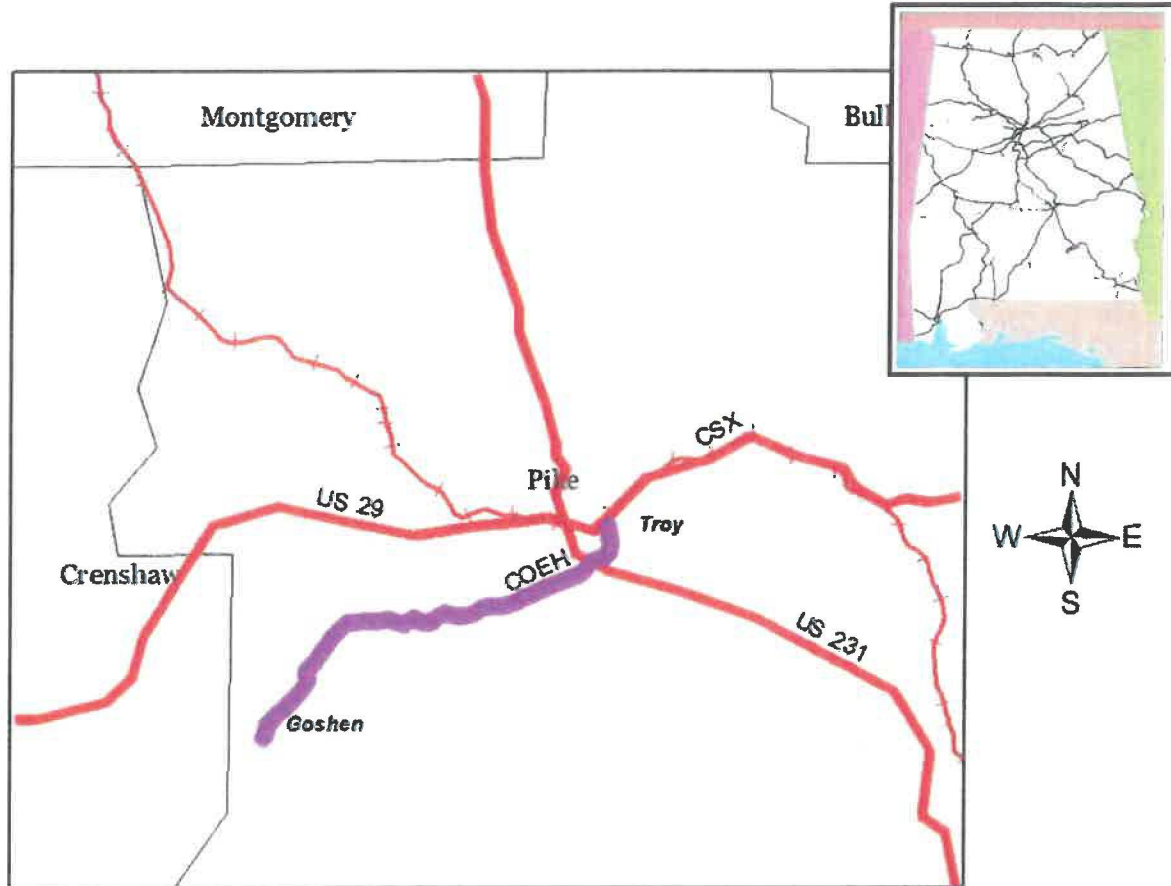
CONTACT INFORMATION

Ken Eziwulski

Vice President, Transportation
13901 Sutton Park Drive, Suite 175
Jacksonville, FL 32224
904.909.6233
keziwulski@gwrr.com

Jerry Vest

Vice President, Gov't & Industry Affairs
PO Box 38652
Pittsburgh, PA 15238
412.963.1805
jvest@gwrr.com
www.gwrr.com



Conecuh Valley Railway, LLC (COEH)

4.5 2.25 0 4.5 Miles

Data provided by ALDOT
Date: November 7, 2013

THREE NOTCH RAILWAY, L.L.C. (TNHR)



INTRODUCTION

The Three Notch Railway, L.L.C. (TNHR) operates over 34 miles of track southeast from Georgiana to Andalusia. TNHR interchanges with CSXT at Georgiana and handles approximately 1,050 carloads per year. Major commodities include chemicals, polypropylene, fertilizer and agricultural products.

HISTORY

Three Notch Railroad started service on June 8, 2001. Previously named the Alabama & Florida Railroad, it was originally a branch line of CSXT, Louisville & Nashville (L&N), Central of Georgia (C of GA), and Atlantic and East Carolina Railway (AEC) railroads. In April 2011, the line was acquired by RailAmerica and TNHR was assigned the agreement to continue to lease and operate the Andalusia and Conecuh Railroad Company's (ACRC's) remaining 2 miles of track in the City of Andalusia, which was classified as industrial. In December 2012, the Surface Transportation Board approved Genesee & Wyoming's purchase of TNHR, one of 11 railroads it now owns in Alabama.

ALABAMA QUICK FACTS

State(s) of Operation

- Alabama

Principal Businesses Served

- N/A

Miles of Track

- 34 miles

Annual Volumes

- 1,050 carloads

Stations Served (north to south)

- Georgiana
- McKenzie
- Red Level
- Andalusia

Equipment/Facilities/Capacities

- N/A

Connecting Railroads

- CSXT (Georgiana)

Major Commodities

- Chemicals
- Polypropylene
- Fertilizer and other agricultural products

CONTACT INFORMATION

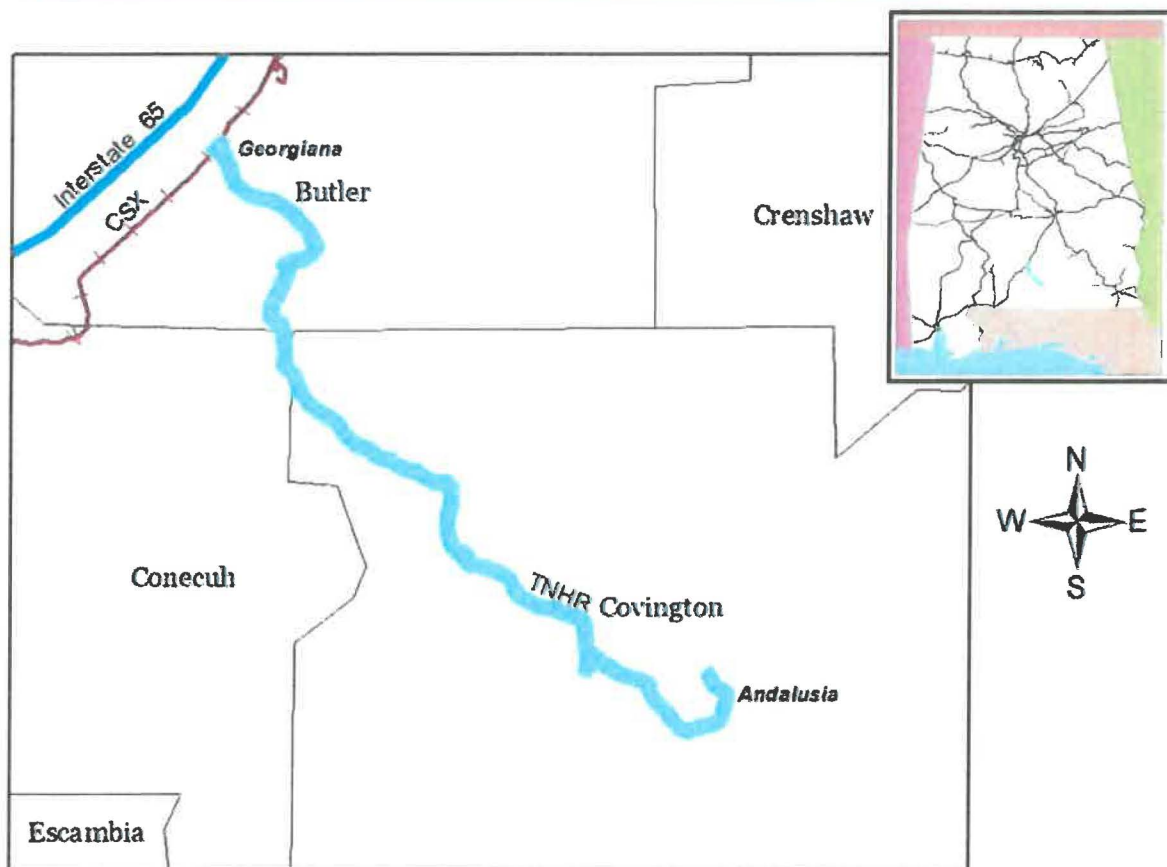
Mark Stephens

Operations Manager
812 N. Main Street
Enterprise, AL 36330
334.808.9158
mark.stephens@gwrr.com

Jerry Vest

Vice President, Gov't & Industry Affairs
PO Box 38652
Pittsburgh, PA 15238
412.963.1805
jvest@gwrr.com

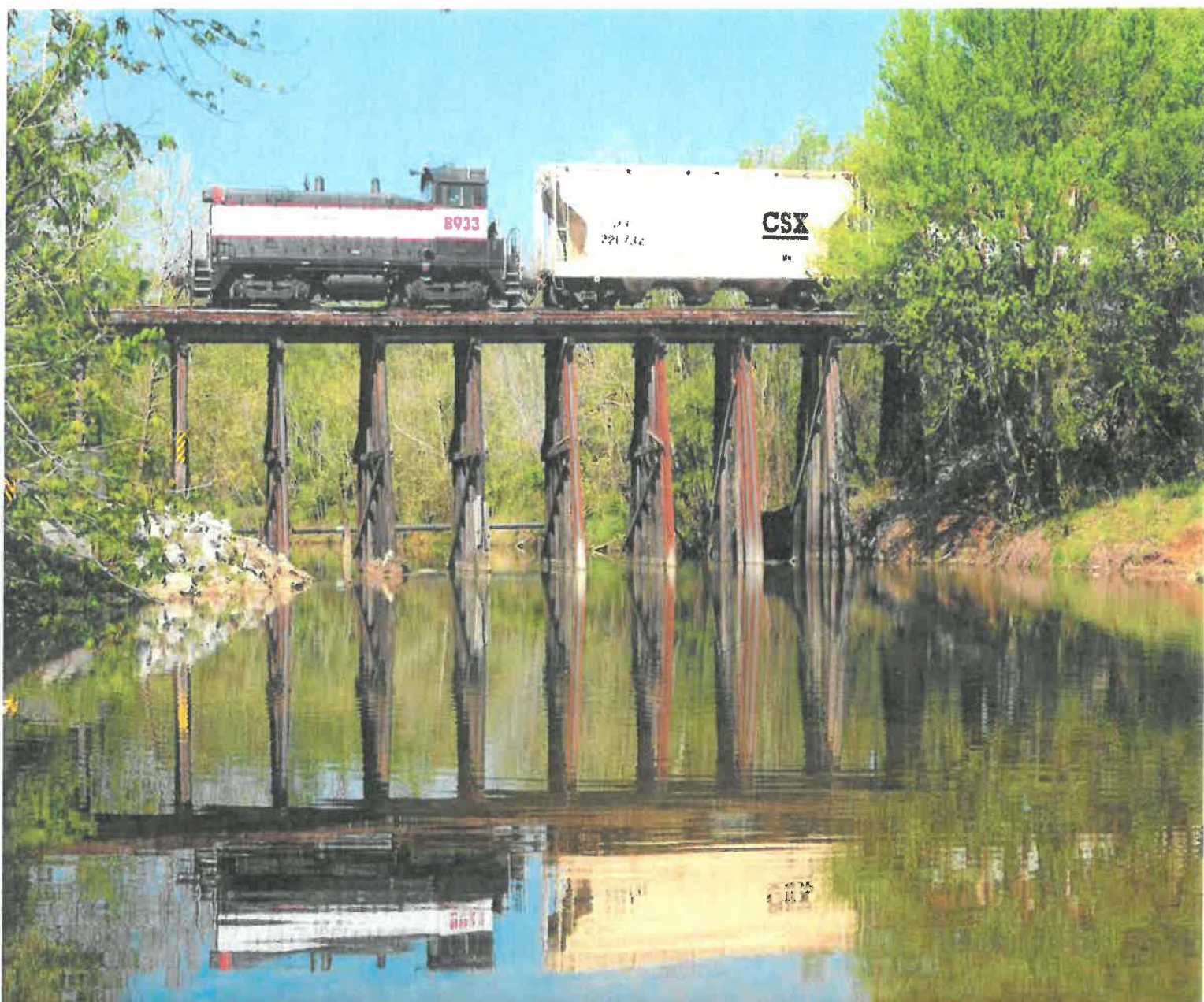
www.gwrr.com



Three Notch Railway, LLC (TNHR)

6 3 0 6 Miles

Data provided by ALDOT
Date: November 7, 2013



Alabama Rail Directory



Bureau of Transportation Planning and Modal Programs

June 2014

2013 Alabama Rail Directory

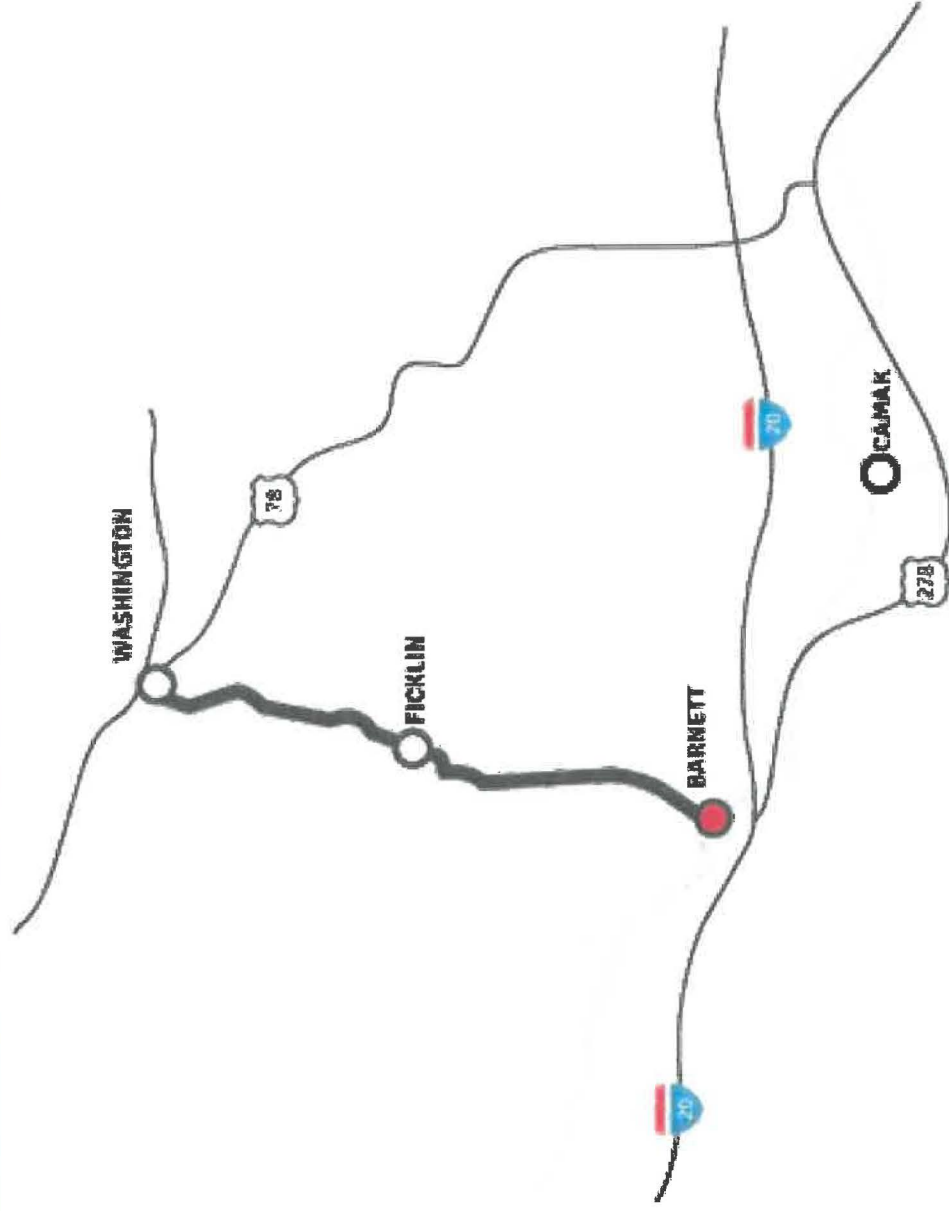


Prepared for
Alabama Department of Transportation
Bureau of Transportation Planning and Modal Programs

Prepared by
J. R. Wilburn and Associates, Inc.



June 2014



- Based out of Washington, GA
- 16 miles of road operated
- 2 employees, 1 locomotive
- 558 carloads handled in 2016
- \$0.67 MM in freight revenue in 2016
- 263K capable, FRA class I track



- Notable customers include:
 - Berry Plastics (Washington)
 - Sunoco Logistics (Washington)
 - Dow Chemical (Washington)



Arizona Central Railroad

The **Clarkdale Arizona Central Railroad** (reporting mark **AZCR**) is an Arizona short-line railroad that operates from a connection with the BNSF Railway at Drake, Arizona. The AZCR runs 37.8 miles (60.8 km) from Drake to Clarkdale, Arizona. An excursion train also runs on the line through Verde Canyon and is operated by the same owners under the Verde Canyon Railroad. The AZCR is owned by David L. Durbano (The Western Group).

Clarkdale Arizona Central Railbus



Reporting mark	AZCR
Locale	Central Arizona
Dates of operation	1989–present
Predecessor	Atchison, Topeka and Santa Fe Railway
Track gauge	4 ft 8½ in (1,435 mm) standard gauge
Headquarters	Clarkdale, Arizona
Website	www.thewesterngroup.net (http://www.thewesterngroup.net)

Contents

- Traffic
- History
 - Verde Valley Railway
- Motive power
- Route
- References
- External links

Traffic

The AZCR handles 1,500 cars per year of inbound coal to the Phoenix Cement Company and shipping outbound cement.^[1]

The Verde Canyon Railroad carries 100,000 passengers per year (2013 figure).

History

Verde Valley Railway

From 1913 to 1989 the line was operated by the Atchison, Topeka and Santa Fe Railway (Santa Fe Railway). On November 17, 1911, the Verde Valley Railway was chartered as a non-operating subsidiary of the Santa Fe Railway. Construction from Cedar Glade (west of Drake) to Clarkdale was immediately commenced on February 13, 1912, and was completed on February 1, 1913, at a total cost of \$1,286,061. It was built to support the copper mines at Jerome, Arizona. On December 31, 1942, the Verde Valley was conveyed to the Santa Fe Railway by deed.

On April 14, 1989, the Santa Fe Railway sold the Clarkdale branch to David L. Durbano's The Western Group. The new railroads were named the Clarkdale Arizona Central Railroad for freight and the Verde Canyon Railroad for passenger service. Passenger service resumed in November 1990.

Motive power

The AZCR has four locomotives that were all built in the 1950s. The railroad has one EMD GP7 (AZCR 2164), one EMD GP9 (AZCR 3413) and a pair of EMD FP7s (1510 and 1512, used to power the excursion)

Route

The route is nestled between two national forests and adjacent to a designated wilderness area, follows the Verde River the entire way and features a 680-foot (210 m) long tunnel and many bridges.

- Drake - BNSF
- Mack
- Bear
- Perkinsville - A ghost town
- Sycamore
- Clarkdale

References

1. Clarkdale Arizona Central Railroad (<http://www.thewesterngroup.net/affiliates/clarkdalearizonacentralrailroad.html>) Archived (<https://web.archive.org/web/20101230233326/http://www.thewesterngroup.net/affiliates/clarkdalearizonacentralrailroad.html>) December 30, 2010, at the Wayback Machine
- Robertson, Donald B. (1986). *Encyclopedia of Western Railroad History: The Desert States: Arizona, Nevada, New Mexico, Utah*. Caldwell, Idaho: The Caxton Printers. p. 112. ISBN 0-87004-305-6.
- Lewis, Edward A. (1996). *American Shortline Railway Guide* (5th ed.). Waukesha, Wisconsin: Kalmbach Publishing. p. 28. ISBN 0-89024-290-9.
- Walker, Mike (1995). *Steam Powered Video's Comprehensive Railroad Atlas of North America - Arizona & New Mexico*. Kent, United Kingdom: Steam Powered Publishing. pp. 9, 15. ISBN 1-874745-04-8.

External links

- Verde Canyon Railroad (<http://www.verdecanyonrr.com>), official website

Retrieved from "https://en.wikipedia.org/w/index.php?title=Arizona_Central_Railroad&oldid=880700562"

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Richmond Pacific Railroad

The **Richmond Pacific Railroad** (reporting mark **RPRC**) is a terminal railroad owned by the Levin-Richmond Terminal Corporation. The RPRC operates on 2.5 miles (4.0 km) of track in the shipping terminal and wharves at Richmond, California.

The RPRC also interchanges with the Union Pacific (UP) and BNSF Railway (BNSF). The shipping tariff is a flat rate of \$210 per car or \$310 per hazardous material car. The railroad operates two shifts, between 6 a.m. - 10 p.m. **The railroad switches about 3,250 cars per year.**

The RPRC was formerly known as the **Parr Terminal Railroad** (reporting mark **PRT**).

History

The PRT was incorporated in July 1950 as a terminal railroad to take over the private railroad of **Parr-Richmond Industrial Corporation**. In 1911, Terminal 1 was constructed as the primary port of the Port of Richmond. In the 1930s the City of Richmond entered an agreement with the **Parr Company** to operate the terminal. The terminal area was primarily used to unload oil crude from ship to storage tanks that supplied the local oil refineries. It also was used to transfer ship cargo to rail cars. The terminal was used as a ferry terminal prior to the opening of the Golden Gate Bridge.

During World War II the U.S. military created the Parr-Richmond Terminal Military Reservation. The military reservation was created as the result of a lease of 6.54 acres (26,500 m²) dated April 19, 1943 at the Parr terminal area. The location was used to support World War II efforts and as warehouse/storage for military shipping at the Port of San Francisco.

Richmond Pacific Railroad

Reporting mark	RPRC
Locale	Richmond, California
Dates of operation	July 1950 (as Parr Terminal Railroad)–Present
Track gauge	4 ft 8½ in (1,435 mm) standard gauge
Headquarters	Richmond, California
Website	[1] (http://www.levinterminal.com/facilities-and-services/rail-services/)



RPRC 1268 performing switching operations.

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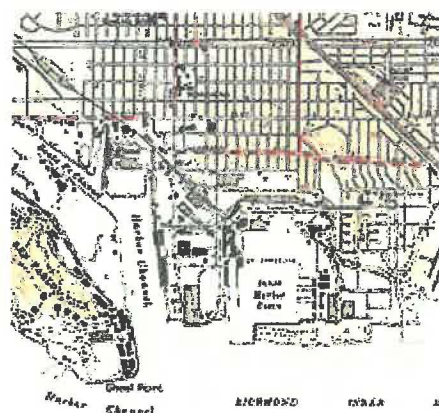
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Further reading

- List of California railroads
- *Pacific Rail News*, May 1996 issue.



Parr-Richmond Terminal Military Reservation, Terminal 1 in 1948



Richmond harbor in 1949

Retrieved from "https://en.wikipedia.org/w/index.php?title=Richmond_Pacific_Railroad&oldid=868565270"

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WIKIPEDIA

Santa Maria Valley Railroad

The **Santa Maria Valley Railroad** (reporting mark **SMV**) is a 14.8 miles (23.8 km) shortline railroad that interchanges with the Union Pacific Railroad's (former Southern Pacific) Coast Line at Guadalupe, California. As of 2006, the Railroad is owned by the Coast Belle Rail Corporation.

In August 2016, the Friends of SMVRR hosted their annual BBQ at the new Transload facility at 1599 A st. in Santa Maria, signaling in the move from the Betteravia site.

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Betteravia Branch

Rosemary Branch (abandoned)

Gates Branch (abandoned)

Motive Power

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Santa Maria Valley Railroad

Reporting mark	SMV
Locale	Santa Barbara County, California
Dates of operation	1911–
Track gauge	4 ft 8½ in (1,435 mm) standard gauge
Headquarters	Santa Maria, California
Website	www.smvrr.com (http://www.smvrr.com/)

Traffic

The TRC handles 2,000 cars annually (1996 estimate). Commodities hauled include:

- Asphalt
- Fertilizer
- Fresh and Frozen Food products
- Gypsum wallboard
- Lumber
- Machinery
- Petroleum Products
- Plastic
- Scrap iron

Prior traffic included:

- Beer

- Sugar and Sugar beets

Passenger Service

Special passenger service was only offered during World War II on the Air Base branch to transport military personnel to the Santa Maria Army Air Base for training. The Air Base branch was constructed in 1943. Excursions were offered for the first time on the SMVRR in November 2006, continuing into 2007.

History

The SMV was incorporated on July 14, 1911 as the **Santa Maria Valley Railway** at Los Angeles, California with A. A. Dougherty listed as President.

The first 3.26 miles (5.25 km) of track, from the Southern Pacific connection at Guadalupe to Betteravia Junction, was actually built by the SP in August 1899 to get to a sugar mill. The SP leased the track to the SMV years later. From Betteravia the SMV built to Santa Maria and on to Roadamite. The SMV also had branches running from Stowell to Air Base, Suey to Rosemary Farms and Rex to Gates.

By 1925 the railway traffic had steeply declined and the railway went bankrupt. Captain George Allan Hancock [1] (<http://web.archive.org/web/20070927225503/http://www.hancockcollege.edu/Default.asp?Page=687>), a principal of the Dominion Oil Company, purchased the railroad for \$75,000 at a Sheriff's auction. The railroad was then reorganized as the **Santa Maria Valley Railroad** in 1926. Until 2006, the railroad was owned by Captain G. Allan Hancock's estate.

The original line ran for 23 miles (37 km), from Guadalupe to Roadamite. The track from Gates to Roadamite was abandoned in 1950.

The last run of No. 21, Captain Hancock's favorite steam locomotive, was in February 1962. Captain Hancock took the throttle one last time. Walt Disney was in the cab with Captain Hancock.

Baldwin 21 currently is undergoing restoration in Astoria, Oregon to be returned to excursion service.

The Union Sugar Beet plant closed in 1993, ending the beet train era.

In 1999 the G. Allan Hancock Estate gained full control of the SMV. The assets of the railroad were sold to Coast Belle Rail Corporation in 2006, ending an 81-year ownership by the Hancock family.

Other than 21, three other steam locomotives are in existence. 205 is nearing completion in the return to Service, also in Oregon, owned by George Lavacott. 100 is also in Oregon, but has not yet entered restoration. 1000 resides on Static Display in Griffith Park at Travel Town.

Timeline

- July 14, 1911 Santa Maria Valley Railway organized
- August 23, 1911 grading commenced
- September 28, 1911 laying rails commenced
- March 15, 1912 construction completed
- October 7, 1911 first train operated
- 1926 Santa Maria Valley *Railway* reorganized as the Santa Maria Valley *Railroad*
- 1950 track abandoned between Gates and Roadamite

- 2006 Purchased by the Coast Belle Rail Corp. from the descendants of G.A. Hancock family
- 2008 All track east of McClelland Street now vacated. Offices moved to Betteravia Industrial Park (at the site of the old sugar mill).

Route

Main Route

- Guadalupe (interchange with UP - former SP) originally leased to SMV by SP.
- Betteravia Junction
- Carr
- Pacer
- Midco
- Santa Maria



Route in 1931

Air Base Branch (Santa Maria Army Air Base)

- Santa Maria
- Airbase (also with a spur to Pesco)

Betteravia Branch

- Betteravia Junction
- Gumm (Iremel)
- Betteravia

Rosemary Branch (abandoned)

- Santa Maria
- Suey
- Rosemary (Rosemary Farms)
- Battles

Gates Branch (abandoned)

- Rosemary (named after owner G. Allan Hancock's daughter)
- Rex
- Gates
- Roadamite (Gates - Roadamite abandoned in 1950)

Motive Power

The present SMV motive power fleet consists of 4(as of March 2016) locomotives.

- SMV #70 a GE 70-ton switcher built in January 1950 (Builder No. 30381) acquired for operation in November 1972 from Fort Dodge DM&S
- SMV #80 a GE 70-ton switcher built in December 1953 (Builder No. 32207) acquired for parts for its fleet of 70-ton switchers in November 1972 from Fort Dodge DM&S

- SMV #1801 and EMD GP9 built in June 1959 (Builder No. 25314) Built for Milwaukee Road as their #319

As of Friday, March 25, 2016, SMV started leasing BUGX #1322, a former Atchison Topeka & Santa Fe (AT&SF) EMD GP7(u), still with the original Blue and Gold Paint Scheme.

The SMV operated five 70 ton switchers and one U6B that were acquired between 1948-1959.

See also

- List of California railroads

References

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- "Santa Maria Valley Railroad Excursions" (<http://www.smvrr.com/excursions.html>). *Excursions*. Retrieved August 21, 2007.

External links

- Official Santa Maria Valley Railroad homepage (<http://www.smvrr.com/>)
 - Friends of the Santa Maria Valley Railroad (<http://www.friends-smvrr.org/>)
 - Abandonment of 5 miles in 2002 (<http://www.epa.gov/fedrgstr/EPA-IMPACT/2002/November/Day-14/i28804.htm>)
 - UPRR profile of SMV (http://www.up.com/customers/shortline/profiles_q-s/smv/index.htm)
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EXHIBIT E



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[Home](#)

Fishers, Noblesville pick Nickel Plate rail plan that paves way for trail

[Lindsey Erdody](#)

July 31, 2017

Officials who control the regional portion of Nickel Plate Railroad on Monday voted in favor of a proposal that would likely put an end to future train traffic from Hamilton County into Indianapolis.

Fishers and Noblesville, which share part of the ownership of the 37-mile railroad corridor that runs from Tipton to Indianapolis, voted Monday morning to select Arcadia Arts & Heritage Depot and Atlanta Pacific Railroad LLC as the rail's new operator.

The winning proposal, which was submitted by Hamilton County Tourism Inc. on behalf of the entities, calls for operating tourism trains only on the northern portion of the corridor—from Arcadia to Tipton.

The boards of public works from both Fishers and Noblesville approved the selection at a Monday morning meeting at Noblesville City Hall.

Officials from Hamilton County, which also co-owns the rail corridor, abstained from voting on the proposals because a conflict of interest and the absence of a commissioner meant the board didn't have enough voters to consider it.

The decision paves the way for Fishers and Noblesville officials to pursue a \$9 million proposal to convert a 9.2-mile stretch of the Nickel Plate railroad corridor into a paved pedestrian and bicycle trail between the two cities. The [proposed Nickel Plate Trail](#) would run from 96th Street in Fishers to Pleasant Street in Noblesville.

The plan would put an end to the popular Indiana State Fair Train, which had used the corridor for more than 30 years before being sidelined last year.

The Hoosier Heritage Port Authority, the quasi-government agency that oversees the Nickel Plate for the owners, had been searching for a company to handle operations on the line after it terminated its policy-of-use agreement with the Indiana Transportation Museum in March 2016 amid concerns about the not-for-profit's financials and maintenance of the tracks.

The Port Authority, which maintained that it was keeping its options open, issued a request for proposals for a new operator in April. It released the scores of the submissions earlier this month. The one from Hamilton County Tourism ranked second behind a proposal from Iowa Pacific Holdings. Three other plans that had lower scores were not up for consideration Monday.

The top-scoring plan by Chicago-based Iowa Pacific Holding, which previously operated the Hoosier State service that runs from Indianapolis to Chicago, would have used the entire corridor from Tipton to Indianapolis for passenger trains, freight trains and railcar storage.

The plan was dependent upon reconnecting the railroad with the Norfolk Southern line in Tipton to allow access to freight and railcar transportation. The local portion of the Nickel Plate line was separated from the Norfolk Southern line in Tipton in 1997 and has been isolated from other rail lines since 2007.

Fishers and Noblesville officials—who want to stick to plans to rip out the rails and build the pedestrian trail—said they weren't in favor of the Iowa Pacific plan because they don't want freight trains running through their cities.

"We just don't need freight in my opinion," Noblesville Mayor John Ditslear said Monday.

Fishers Mayor Scott Fadness seconded that opinion. "The idea of freight running through downtown Fishers, I think, is not something our community wants," he said.

Two of the three proposals that were not sent on to the boards of public works for consideration did not propose using freight trains. All three proposed using the entire length of the rail line.

The Hamilton County Commissioners did not vote because Commissioner Christine Altman abstained because of a conflict of interest and Commissioner Steve Dillinger was not present. That left only Commissioner Mark Heirbrandt available to vote.

However, Hamilton County did participate in the unanimous vote to officially bank the rail, preserving the right of way of the entire corridor for future uses, which would include the proposed pedestrian trail.

The [proposal from Hamilton County Tourism](#) calls for using an 8.5-mile section of the railroad from Arcadia to Tipton as a tourist attraction. A not-for-profit called Nickel Plate Heritage Railroad Inc. will oversee the programming and the Atlanta Pacific Railroad, which is owned by the former president and CEO of the Indiana Rail Road, Thomas Hoback, will operate the trains.

"The Nickel Plate Heritage Railroad model is one like those in the airline industry," the proposal stated. "A railroad operation company will manage the equipment and track for the company that manages the programming and schedule, as well as marketing and ticket sales."

Atlanta Pacific Railroad will acquire several locomotives and passenger cars with a minimum capacity of 200, which could cost an estimated \$750,000. Funding is expected to come from grants, ticket sales, sponsorships and gifts.

The plan predicts the themed, excursion trains would attract 25,000 passengers per year and operate 75 days out of the year, mostly on Fridays and Saturdays.

The Port Authority will negotiate a final agreement with Hamilton County Tourism.

The Indiana Transportation Museum also submitted a proposal, which was ranked third, but nearly all of it was marked proprietary and confidential and so it was not made public. According to the one section that was shared, the plan involved using the entire corridor for excursions such as the Indiana State Fair Train and Polar Bear Express, plus other year-round attractions.

Local officials and museum leaders have been [sparring for months](#) about the condition of the tracks and the best future usage of it.

The museum has filed a [federal lawsuit](#) against the Port Authority, Noblesville and Fishers in which it accuses the government of unjustly interfering in its operations, causing a critical loss of more than a half-million dollars in revenue.

"I appreciate the hard work of everyone involved in making the Nickel Plate Trail a reality, including the strong leadership from Mayor Ditslear and the County Commissioners," Fadness said in written remarks. "The proposal approved today allows for the preservation of the train going north from Noblesville while providing a year-

round recreational trail amenity for our residents.

"The Nickel Plate Railroad played an important role in our history as a city and I believe the Nickel Plate Trail will honor that history while creating an amenity that so many of our residents have requested. This will be transformational for the heart of our city and my team and I will work to involve as many community members in the planning of the trail design as possible. I look forward to honoring our past while celebrating the future of our vibrant city with the Nickel Plate Trail."

EXHIBIT F



HOOSIER RAILS TO TRAILS COUNCIL
PO BOX 1688
INDIANAPOLIS IN 46206-1688
317-237-9348

2018 June 5

Ms. Danielle Hall Mitchell | President
U.S. Rail Corporation
7846 W. Central Ave.
Toledo, OH 43617

Ms. Mitchell,

The Hoosier Rails to Trails Council (HRTC) has been closely following the Nickel Plate Railroad situation since the trail idea was proposed. We are confident that a trail can be established alongside the railroad, thereby preserving the original rail transportation use of the corridor and also serving any community with a pedestrian pathway along the same corridor. In fact, we believe that by building the trail alongside the railroad and allowing the rail to continue use, the trail could be built primarily with private funding.

We've previously sent correspondence to the present Owners of the railroad, and relevant council bodies, offering to meet and discuss the feasibility of building the trail alongside the railroad. Having received no direct response to our offer, we turn now to you to offer our assistance in serving all interests to ensure the best and highest use of this corridor.

Should U.S. Rail be authorized to operate over this line, HRTC is willing: to help secure public support and private funding for a trail to be built alongside the railroad so that the proposed Nickel Plate Trail can still become an amenity that residents are able to utilize without the needless destruction of the railroad; and to help design and build such a rail-with-trail.

Sincerely,

Richard Vonnegut, Vice Chair
317-440-9069