



West Virginia University

Northern West Virginia Brownfields Assistance Center

October 31, 2018

RE: Docket EP-749-1 – Proposed Rulemaking to Limit NITU's to a Maximum of Six (6) 180-Day Extensions

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

246691

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Public Record

Dear Ms. Brown,

These comments, filed on behalf of the Northern WV Brownfields Assistance Center (NBAC) are in opposition to a proposed rule by the STB to require that the number of extensions of the trail use negotiation period not exceed six, or essentially three years.

Through NBAC's work to revitalize communities through brownfield redevelopment, we often focus on converting abandoned railways into rail-trails as central features that serve as a focal point for additional community redevelopment. We are currently managing a large number of trail redevelopment projects in Harrison, Morgan, Fayette, and Preston Counties, among others. NBAC is working with the WV Department of Environmental Protection as they prepare specialized guidelines and standards for remediating abandoned railways for recreational use and engage a WV Rail Trails Task Force, in an effort to make the process of redeveloping abandoned railways as rail trails more manageable for local project managers.

The deal structuring process to redevelop railbanked properties as trails is, in many cases, a new and perceivably complex process for local project managers. Additionally, the lag time between correspondence involving various public and private entities, paired with staff turnover within each entity often causes negotiations to continue beyond the proposed limit of 3 years.

The purpose of railbanking is to preserve our country's railroad corridors and allow for interim trail use. Railbanking has not only transformed thousands of communities across the country by providing safe public spaces for recreation and transportation, it has also preserved thousands of miles of rail corridors that would otherwise have been abandoned. Assembly of these rights-of-way in modern times would be nearly impossible. Railbanking keeps rail corridors intact.

Imposing a 3-year limitation on negotiations would greatly obstruct – and in some cases prevent – railbanking to occur. According to data collected by the Rails-to-Trails Conservancy, of the 393 successfully railbanked corridors, at least 65 of them took more than 3 years of negotiation between the railroad and the CITU/NITU holder to complete. There are a variety of reasons that negotiations may extend, including: federal and state regulatory processes (environmental assessment, e.g.), the trail manager's ability to secure state or federal funds for acquisition, and appraisal disputes. There is no reason to limit railbanking negotiations. The process of railbanking, including agreement to extend

negotiations, is completely voluntary for the railroad. "Reversionary property owners" have available to them means of compensation through this process as well.

If the STB were to consider changes related to railbanking negotiations, a suggested improvement would be to change the initial railbanking/interim trail negotiating period to establish a one-year period (instead of 180 days) for any initial and subsequent negotiating periods. From experience in our negotiations in West Virginia between railroads and Interim Trail Users almost always extend beyond the short 180-day timeframe, creating additional and unnecessary obstacles for both the railroad and the Interim Trail User.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read "P. Kirby", written in a cursive style.

Patrick Kirby, Director