

PENTIUK, COUVREUR & KOBILJAK

PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELLORS AT LAW
www.pck-law.com

RANDALL A. PENTIUK*
JOSEPH G. COUVREUR
KURT M. KOBILJAK
KERRY L. MORGAN** <
MICHAEL P. HURLEY
JAYSON J. HALL
LORI R. RUIZ

* ALSO ADMITTED TO PRACTICE
IN THE DISTRICT OF COLUMBIA

** ALSO ADMITTED TO PRACTICE IN VIRGINIA

< OF COUNSEL TO THE FIRM

206232

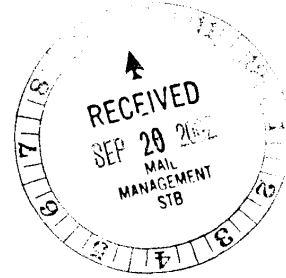
EDELSON BUILDING, SUITE 200
2915 BIDDLE AVENUE
WYANIKOTTE, MICHIGAN 48192

TELEPHONE: (734) 281-7100
FACSIMILE: (734) 281-7102
EMAIL: firm@pck-law.com

September 19, 2002

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W. Room 711
Washington, D.C. 20423-0001

RECEIVED
SEP 20 2002
Part of
Public Record



Re: STB Finance Docket No. 34040, Riverview Trenton Railroad Company

Dear Secretary Williams:

Enclosed please find the original and ten copies of the Supplemental Brief of the City of Riverview Concerning the American Heritage Rivers Review Requirement and Proof of Service for filing in reference to the aforementioned matter.

Please contact the undersigned should you have any questions or concerns.

Very truly yours,

PENTIUK, COUVREUR & KOBILJAK, P.C.

Kerry L. Morgan
Kerry L. Morgan
Office of City Attorney
City of Riverview
CITY OF RIVERVIEW

KLM:jel
Enclosure

c: Wally G. Long w/enclosures
Mark J. Zausmer w/enclosures
David H. Coburn w/enclosures

F04-R-ZC-DRVW/LITRTRR 15BTLETT 918

BEFORE THE
SURFACE TRANSPORTATION BOARD

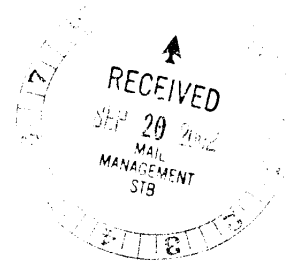
Finance Docket No. 3~~3~~⁴040

RIVERVIEW TRENTON RAILROAD COMPANY
PETITION FOR EXEMPTION FROM 49 U.S.C. 10901
TO ACQUIRE AND OPERATE A RAIL LINE IN
WAYNE COUNTY, MICHIGAN

SUPPLEMENTAL BRIEF OF THE CITY OF RIVERVIEW CONCERNING THE
AMERICAN HERITAGE RIVERS REVIEW REQUIREMENT

Randall A. Pentiuk
City Attorney
City of Riverview
Edelson Building, Suite 200
2915 Biddle Avenue
Wyandotte, Michigan 48192

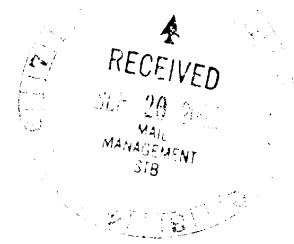
September 19, 2002



ENTERED
City of Proceeding
SEP 20 2002
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33040



RIVERVIEW TRENTON RAILROAD COMPANY
PETITION FOR EXEMPTION FROM 49 U.S.C. 10901
TO ACQUIRE AND OPERATE A RAIL LINE IN
WAYNE COUNTY, MICHIGAN

**SUPPLEMENTAL BRIEF OF THE CITY OF RIVERVIEW CONCERNING THE
AMERICAN HERITAGE RIVERS REVIEW REQUIREMENT**

NOW COMES the City of Riverview, respondent herein, by and through its attorneys **PENTIUK, COUVREUR & KOBILJAK, P.C.** and in support of its Supplemental Brief in opposition to the Petition of Riverview Trenton Railroad for recognition as a Railroad pursuant to Federal Law, states as follows:

1. On December 11, 2000, RTR filed a notice of exemption with the Board to operate as a class III railroad pursuant to 49 CFR 1150.31 et seq. and to operate track in Riverview and Trenton, in Wayne County, Michigan in STB Finance Docket No. 33980.
2. Soon thereafter, petitions to revoke said exemption were filed by Wayne County, Grand Trunk western Railroad Incorporated, the City of Riverview, and the City of Trenton.
3. On May 1, 2001, RTR initiated a new proceeding at the Board with respect to its rail plans by filing a Petition for Exemption with the Board in Finance Docket No. 34040.

4. On May 15, 2001, the Board issued a decision initiating an investigation of the issues raised in the RTR class exemption notice proceeding, Finance Docket No. 33980.
5. On February 14, 2002, the Board issued a decision granting the petitions to revoke the use of the class exemption in STB Finance Docket No. 33980, and setting due dates for supplemental information to be filed in STB Finance Docket No. 34040.
6. Under the National Environmental Policy Act and the Board's environmental rules in the Code of Federal Regulations at 49 CFR Part 1105, the Board was required to conduct and complete an environmental review of RTR's proposed actions.
7. On October 15, 2001, the Board's Section of Environmental Analysis (SEA) issued an environmental assessment of RTR's proposed acquisition and operation.
8. Executive Order 13061, effective September 11, 1997 requires the establishment of an interagency committee charged with designation and development of certain bodies of water as "American Heritage Rivers." See Exhibit "A."
9. Section 3 of said Executive Order directs the Secretary of Transportation among others to participate in said committee.
10. The surface transportation board is within the jurisdiction of the Secretary of Transportation.
11. Section 4 of said Executive Order states as follows:
 - (a) The American Heritage Rivers initiative has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation.
 - (b) Executive agencies (agencies"), to the extent permitted by law and consistent with their missions and resources, shall coordinate Federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage.
 - (c) Agencies shall develop plans to bring increase deficiencies to existing and authorized programs with goals that are supportive of protection and restoration of communities along rivers.
 - (d) Agencies are encouraged, to the extent permitted by all, to develop partnerships with State, local, and tribal governments and community and non-governmental organizations. Agencies will be responsive to the diverse needs of different kinds of

communities from the core of our cities to remote rural areas and shall seek to ensure that the role played by the Federal Government is complementary to the plans and work being carried out by State, local and tribal governments. To the extent possible, Federal resources will be strategically directed to complement resources being spent by these governments.

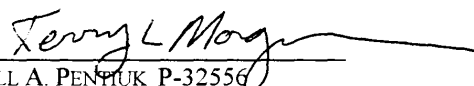
12. The City of Riverview is concerned that the operation of the Riverview Trenton Railroad by the Petitioner as defined in its Petition currently pending before this body may interfere with allowing public access to the Detroit river.
13. This consideration ought to be taken into account by the Surface Transportation Board and the Petition examined accordingly to determine whether or not and to what extent the Petition if granted ought to be modified or amended to allow and maximize public access to the river to the extent practicable and consistent with your agencies mission.
14. That such a requirement is mandated by section 4(h). Moreover section 4(c) encourages the agency to emphasize river protection, restoration and community revitalization.
15. The City of Riverview is very concerned that Petition if granted would undermine the revitalization of this area which the City desires to undertake this estimated American Heritage River.
16. That same would be contrary to sub-section 4(c) if not taken into account and evaluation the Petition.
17. The Detroit River has been designated as an American Heritage River by the United States.
18. Moreover the City of Riverview has advised that one of the particular initiatives undertaken by the American Heritage River committee is the establishment of a greenway from Lake Saint Clair to Lake Erie.
19. The so called Brownstown Flat Rock - Brownstown East West connector is one of the three keystone projects identified by the Greater Detroit American Heritage Institute River

initiative. This initiative has championed a division of lake greenways from Lake Saint Clair to Lake Erie.

20. The initiative as an official project of the American Heritage River emphasis must also be evaluated in light of the Petitioners request for designation as an affiliated recognized Railroad.
21. A review of the Enviornmental Assessment dated October 15, 2001 prepared by the STB does not appear to address this concern.
22. Wherefore the Petitioner asks that the Civil Transportation Board deny the Petition because it fails to address any American Heritage River criteria as stated and specified by the City of Riverview.

Respectfully submitted,

PENTIUK, COUVREUR & KOBILJAK, P.C.

BY: 

RANDALL A. PENTIUK P-32556

KERRY L. MORGAN P-32645

Attorneys for Respondent City of Riverview

Edelson Building, Suite 200

2915 Biddle Avenue

Wyandotte, Michigan 48192

(734) 281-7100

Dated: September 19, 2002

ATTACHMENT EXHIBIT "A"

P: 4-R-ZC/bentis RVWVIE TRN_RAIL Supplemental Brief 8-20.wpd



What is the Initiative?
Designated Rivers
"Navigator News"
AHRI Contacts
Your River and Its
Watershed
Services for Your River

U.S. Environmental Protection Agency American Heritage Rivers

Recent Additions | Contact Us | Print Version

Search:



EPA Home > Water > Wetlands, Oceans, & Watersheds > American Heritage Rivers > 13061

EXHIBIT

A

Executive Order 13061

AMERICAN HERITAGE RIVERS

Executive Order 13061 EO 13061

DATE: 09-11-1997

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

September 11, 1997

EXECUTIVE ORDER 13061

FEDERAL SUPPORT OF COMMUNITY EFFORTS ALONG AMERICAN HERITAGE RIVERS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969 (Public Law 91-190), and in order to protect and restore rivers and their adjacent communities, it is hereby ordered as follows:

Section 1. Policies.

(a) The American Heritage Rivers initiative has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation.

(b) Executive agencies ("agencies"), to the extent permitted by law and consistent with their missions and resources, shall coordinate Federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage.

(c) Agencies shall develop plans to bring increased efficiencies to existing and authorized programs with goals that are supportive of protection and restoration of communities along rivers.

(d) In accordance with Executive Order 12630, agencies shall act with due regard for the protection of private property provided for by the Fifth Amendment to the United States Constitution. No new regulatory authority is created as a result of the American Heritage Rivers initiative. This initiative will not interfere with matters of State, local, and tribal government jurisdiction.

(e) In furtherance of these policies, the President will designate rivers that meet certain criteria as "American Heritage Rivers."

(f) It is the policy of the Federal Government that communities shall nominate rivers as American Heritage Rivers and the Federal role will be solely to support community-based efforts to preserve, protect, and restore these rivers and their communities.

(g) Agencies should, to the extent practicable, help identify resources in the private and nonprofit sectors to aid revitalization efforts.

(h) Agencies are encouraged, to the extent permitted by law, to develop partnerships with State, local, and tribal governments and community and nongovernmental organizations. Agencies will be responsive to the diverse needs of different kinds of communities from the core of our cities to remote rural areas and shall seek to ensure that the role played by the Federal Government is complementary to the plans and work being carried out by State, local, and tribal governments. To the extent possible, Federal resources will be strategically directed to complement resources being spent by these governments.

(i) Agencies shall establish a method for field offices to assess the success of the American Heritage River initiative and provide a means to recommend changes that will improve the delivery and accessibility of Federal services and programs. Agencies are directed, where appropriate, to reduce and make more flexible procedural requirements and paperwork related to providing assistance to communities along designated rivers.

(j) Agencies shall commit to a policy under which they will seek to ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of American Heritage River communities. The policy will require agencies to consult with American Heritage River communities early in the planning stages of Federal actions, take into account the communities' goals and objectives and ensure that actions are compatible with the overall character of these communities. Agencies shall seek to ensure that their help for one community does not adversely affect neighboring communities. Additionally, agencies are encouraged to develop formal and informal partnerships to assist communities. Local Federal facilities, to the extent permitted by law and consistent with the agencies' missions and resources, should provide public access, physical space, technical assistance, and other support for American Heritage River communities.

(k) In addition to providing support to designated rivers, agencies will work together to provide information and services to all communities seeking support.

Sec. 2. Process for Nominating an American Heritage River.

(a) Nomination. Communities, in coordination with their State, local, or tribal governments, can nominate their river, river stretch, or river confluence for designation as an American Heritage River. When several communities are involved in the nomination of the same river, nominations will detail the coordination among the interested communities and the role each will play in the process. Individuals living outside the community may not nominate a river.

(b) Selection Criteria. Nominations will be judged based on the following:

(1) the characteristics of the natural, economic, agricultural, scenic, historic, cultural, or recreational resources of the river that render it distinctive or unique;

(2) the effectiveness with which the community has defined its plan of action and

the extent to which the plan addresses, either through planned actions or past accomplishments, all three American Heritage Rivers objectives, which are set forth in section 1(a) of this order;

(3) the strength and diversity of community support for the nomination as evidenced by letters from elected officials; landowners; private citizens; businesses; and especially State, local, and tribal governments. Broad community support is essential to receiving the American Heritage River designation; and

(4) willingness and capability of the community to forge partnerships and agreements to implement their plan to meet their goals and objectives.

(c) Recommendation Process.

The Chair of the Council on Environmental Quality ("CEQ") shall develop a fair and objective procedure to obtain the views of a diverse group of experts for the purpose of making recommendations to the President as to which rivers shall be designated. These experts shall reflect a variety of viewpoints, such as those representing natural, cultural, and historic resources; scenic, environmental, and recreation interests; tourism, transportation, and economic development interests; and industries such as agriculture, hydropower, manufacturing, mining, and forest management. The Chair of the CEQ will ensure that the rivers recommended represent a variety of stream sizes, diverse geographical locations, and a wide range of settings from urban to rural and ensure that relatively pristine, successful revitalization efforts are considered as well as degraded rivers in need of restoration.

(d) Designation.

(1) The President will designate certain rivers as American Heritage Rivers. Based on the receipt of a sufficient number of qualified nominations, ten rivers will be designated in the first phase of the initiative.

(2) The Interagency Committee provided for in section 3 of this order shall develop a process by which any community that nominates and has its river designated may have this designation terminated at its request.

(3) Upon a determination by the Chair of the CEQ that a community has failed to implement its plan, the Chair may recommend to the President that a designation be revoked. The Chair shall notify the community at least 30 days prior to making such a recommendation to the President. Based on that recommendation, the President may revoke the designation.

Sec. 3. Establishment of an Interagency Committee. There is hereby established the American Heritage Rivers Interagency Committee ("Committee"). The Committee shall have two co-chairs. The Chair of the CEQ shall be a permanent co-chair. The other co-chair will rotate among the heads of the agencies listed below.

(a) The Committee shall be composed of the following members or their designees at the Assistant Secretary level or equivalent:

(1) The Secretary of Defense;

(2) The Attorney General;

(3) The Secretary of the Interior;

STB



- (4) The Secretary of Agriculture;
- (5) The Secretary of Commerce;
- (6) The Secretary of Housing and Urban Development;
- (7) The Secretary of Transportation;
- (8) The Secretary of Energy;
- (9) The Administrator of the Environmental Protection Agency;
- (10) The Chair of the Advisory Council on Historic Preservation;
- (11) The Chairperson of the National Endowment for the Arts; and
- (12) The Chairperson of the National Endowment for the Humanities.

The Chair of the CEQ may invite to participate in meetings of the Committee, representatives of other agencies, as appropriate.

(b) The Committee shall:

- (1) establish formal guidelines for designation as an American Heritage River;
- (2) periodically review the actions of agencies in support of the American Heritage Rivers;
- (3) report to the President on the progress, accomplishments, and effectiveness of the American Heritage Rivers initiative; and
- (4) perform other duties as directed by the Chair of the CEQ.

Sec. 4. Responsibilities of the Federal Agencies. Consistent with Title I of the National Environmental Policy Act of 1969, agencies shall:

- (a) identify their existing programs and plans that give them the authority to offer assistance to communities involved in river conservation and community health and revitalization;
- (b) to the extent practicable and permitted by law and regulation, refocus programs, grants, and technical assistance to provide support for communities adjacent to American Heritage Rivers;
- (c) identify all technical tools, including those developed for purposes other than river conservation, that can be applied to river protection, restoration, and community revitalization;
- (d) provide access to existing scientific data and information to the extent permitted by law and consistent with the agencies mission and resources;
- (e) cooperate with State, local, and tribal governments and communities with respect to their activities that take place in, or affect the area around, an American Heritage River;

(f) commit to a policy, as set forth in section 1(j) of this order, in making decisions affecting the quality of an American Heritage River;

(g) provide, once a river is designated an American Heritage River and at the community's request, a single representative called a "River Navigator" with whom communities can communicate goals and needs and who will facilitate community-agency interchange;

(h) allow public access to the river, for agencies with facilities along American Heritage Rivers, to the extent practicable and consistent with their mission; and

(i) cooperate, as appropriate, with communities on projects that protect or preserve stretches of the river that are on Federal property or adjacent to a Federal facility.

Sec. 5. Responsibilities of the Committee and the Council on Environmental Quality. The CEQ shall serve as Executive agent for the Committee, and the CEQ and the Committee shall ensure the implementation of the policies and purposes of this initiative.

Sec. 6. Definition. For the purposes of this order, Executive agency means any agency on the Committee and such other agency as may be designated by the President.

Sec. 7. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
September 11, 1997.

[EPA Home](#) | [Privacy and Security Notice](#) | [Contact Us](#)

Last updated on Friday, July 19th, 2002
URL: <http://www.epa.gov/rivers/eo13061.html>

BEFORE THE
SURFACE TRANSPORTATION BOARD

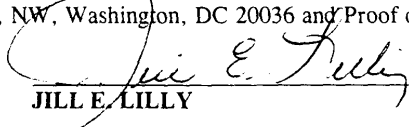
Finance Docket No. 33040
RIVERVIEW TRENTON RAILROAD COMPANY
PETITION FOR EXEMPTION FROM 49 U.S.C. 10901
TO ACQUIRE AND OPERATE A RAIL LINE IN
WAYNE COUNTY, MICHIGAN

PROOF OF SERVICE/MAILING

STATE OF MICHIGAN)
)§
COUNTY OF WAYNE)

JILL E. LILLY being first duly sworn deposes and says that she is employed by **PENTIUK, COUVREUR & KOBILJAK, P.C.**, Attorneys for City of Riverview in this matter, and that on September 19, 2002, she caused to be placed by United Parcel Post - overnight delivery containing an original and ten copies of Supplemental Brief of the City of Riverview Concerning the American Heritage Rivers Review Requirement to the Honorable Vernon A. Williams, Secretary, Surface Transportation Board, 1925 K Street, N.W. Room 711, Washington DC 20423; and in the United States mail an envelope, with full postage thereon affixed containing one copy of Status Report from the City of Riverview to Wallace G. Long, Howard & Howard, 39400 Woodward Avenue, Suite 101, Bloomfield Hills, Michigan 48034, one copy to Mark J. Zausmer, 31700 Middlebelt Road, Suite 150, Farmington Hills, Michigan 48334 and one copy to David H. Coburn, 1330 Connecticut Avenue, NW, Washington, DC 20036 and Proof of Service.

Further, deponent sayeth not.


JILL E. LILLY

Subscribed and sworn to before me
on September 19, 2002.


PATRICIA D. JEDLICKI, Notary Public

Wayne County, Michigan

My Commission Expires: 4/22/05

F:\4-R-ZC-1\RVW\LIT\RTRR\1PROOFSE.918