

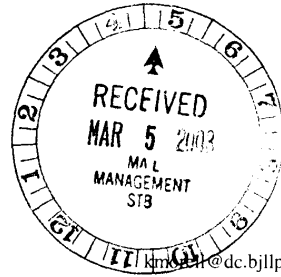
**BALL JANIK LLP**

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947



KARL MORELL

207353

March 5, 2003

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Office of Proceedings

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Public Record

BY HAND DELIVERY

The Honorable Vernon Williams  
Surface Transportation Board  
1925 K Street NW  
Suite 715  
Washington, DC 20423-001

Re: Docket No. AB-389 (Sub-No. 1X), Georgia Great Southern  
Division, South Carolina Central Railroad Co., Inc. --  
Abandonment and Discontinuance Exemption -- Between Albany  
and Dawson, In Terrel, Lee And Dougherty Counties, GA  
Petition To Vacate A Notice Of Interim Trail Use Or Abandonment  
Pursuant To 49 C.F.R. 1152.29(c)(3)

Dear Secretary Williams:

Attached please find for filing the original and ten (10) copies a Petition To Vacate A Notice Of Interim Trail Use in the above-referenced proceeding.

Please time and date stamp the extra copy of the Petition and return it with our messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell

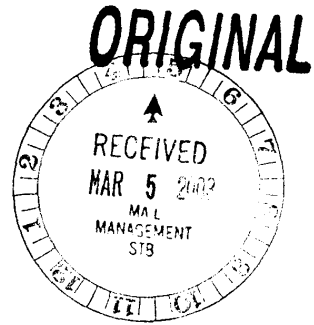
Enclosures

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-389 (SUB-NO. 1X)

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GEORGIA GREAT SOUTHERN DIVISION, SOUTH CAROLINA CENTRAL RAILROAD  
CO., INC.-- ABANDONMENT AND DISCONTINUANCE EXEMPTION -- BETWEEN  
ALBANY AND DAWSON, IN TERREL, LEE AND DOUGHERTY COUNTIES, GA

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PETITION TO VACATE A NOTICE OF INTERIM TRAIL USE OR ABANDONMENT  
PURSUANT TO 49 C.F.R. 1152.29 (c)(3)

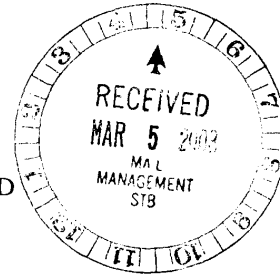
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Karl Morell  
Of Counsel  
Ball Janik LLP  
1455 F St., N.W.  
Suite 225  
Washington, D.C. 20005  
(202) 638-3307

Attorney for:  
GEORGIA SOUTHWESTERN  
RAILROAD, INC.

Dated: March 5, 2003

BEFORE THE  
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-389 (SUB-NO. 1X)

GEORGIA GREAT SOUTHERN DIVISION, SOUTH CAROLINA CENTRAL RAILROAD  
CO., INC.-- ABANDONMENT AND DISCONTINUANCE EXEMPTION -- BETWEEN  
ALBANY AND DAWSON, IN TERREL, LEE AND DOUGHERTY COUNTIES, GA

PETITION TO VACATE A NOTICE OF INTERIM TRAIL USE OR ABANDONMENT  
PURSUANT TO 49 C.F.R. 1152.29 (c)(3)

Georgia Southwestern Railroad, Inc. ("GSWR"), the successor in interest to the Georgia Great Southern Division, South Carolina Central Railroad, Co., Inc. ("GGS"), requests the Surface Transportation Board ("Board") to vacate the notice of interim trail use or abandonment ("NITU") issued in this proceeding in order to permit GSWR to reactivate rail service on the 13.62-mile rail line located between Albany and Sasser, GA. In vacating the NITU in this proceeding, GSWR respectfully urges the Board to clarify that: (1) an interim trail user cannot transfer its interests in the rail line to another entity without the prior approval of the Board and consent of the railroad; and (2) the interim trail user is not entitled to monetary compensation as a precondition to the reactivation of rail service under the National Trails System Act, 16 U.S.C. 1247(d) ("Trails Act"), and the Board's trail rules, 49 C.F.R. 1152.29.

## BACKGROUND

In May 1994, GGS filed a petition seeking an exemption from the prior approval requirements of then 49 U.S.C. 10903-06 to abandon GGS's 13.62-mile rail line located between milepost 86.5, at Albany, and milepost 72.88, at Sasser (the "Line"), and to discontinue service over its 5.38-mile rail line between Sasser and Dawson, GA. By decision and NITU served August 16, 1996, the Board exempted the abandonment and discontinuance from its prior approval requirements. In addition, the NITU authorized GGS and Chehaw Park Authority ("Chehaw") to negotiate an interim trail use/rail banking agreement for the Line. By decision served October 25, 1996, the Rails to Trails Conservancy ("RTC") was substituted for Chehaw as the negotiating party. A copy of the October 25<sup>th</sup> NITU is attached as Exhibit No. 1. The initial negotiating period was extended twice by decisions served February 28, and August 11, 1997. In October 1997, the parties reached an interim trail use agreement. It appears that RTC entered into an agreement to transfer its interest in the Line to South Georgia Rails To Trails, Inc. ("SGR") in September 2001.

While GGS's abandonment petition was pending, GGS's parent, RailTex, Inc. ("RailTex"), filed a notice of exemption under 49 C.F.R. 1180.2(d)(3), to transfer various rail lines, including the Line, from South Carolina Central Railroad Co., Inc. ("SCCR"),<sup>1</sup> to GSWR. *See Finance Docket No. 32682, RailTex, Inc. – Corporate Family Transaction Exemption – Georgia and Alabama Lines, South Carolina Central Railroad Co., Inc. and Georgia*

<sup>1</sup> SCCR's rail line in Georgia, extending from Dawson to Albany, was managed by GGS as a division of SCCR.

*Southwestern Railroad, Inc.* (not printed), served April 20, 1995.<sup>2</sup> Subsequently, RailTex and its railroad subsidiaries, including GSWR and SCCR, were acquired by RailAmerica, Inc. (“RailAmerica”). See STB Finance Docket No. 33813, *RailAmerica, Inc. – Control Exemption – RailTex, Inc.* (not printed), served January 10, 2000.

On December 21, 2001, GSWR and SCCR, now subsidiaries of RailAmerica, filed a notice of exemption under 49 C.F.R. 1180.2(d)(3) for SCCR to acquire GSWR’s rail lines and for SCCR to lease those rail lines back to GSWR. The purpose of the transaction was to facilitate the acquisition of the assets of the rail lines owned and operated by GSWR by the State of Georgia, Department of Transportation (“GDOT”).<sup>3</sup> See STB Finance Docket No. 34057, *State of Georgia, Department of Transportation – Acquisition Exemption – South Carolina Central Railroad, Inc.* (not printed), served April 30, 2002. Out of an abundance of caution and to insure that GSWR held the exclusive right to reactivate rail service on the Line, GSWR acquired from SCCR any and all rights SCCR might have had at that time in the Line. See STB Finance Docket No. 34144, *Georgia Southwestern Railroad, Inc. – Sale and Lease Exemption Within a Corporate Family Transaction – South Carolina Central Railroad, Inc.* (not printed), served January 18, 2002. In March 2002, RailAmerica sold all of the stock of GSWR to its current owners.

<sup>2</sup> The transaction in Finance Docket No. 32682 was consummated after the abandonment exemption was granted but before the agreement with RTC was reached. Consequently, the rail banking agreement was entered into by GSWR and RTC.

<sup>3</sup> GSWR’s interest in the Line was not transferred to SCCR, since the Line was not part of the transaction with GDOT.

GSWR currently interchanges all traffic moving to and from the Norfolk Southern Railway Company ("NS") at Albany, GA. The interchange at Albany necessitates GSWR utilizing its trackage rights over NS lines located between either Americus and Albany or Smithville and Albany depending on the routing of the traffic. *See* map attached as Exhibit No. 2. The use of the trackage rights lines is operationally and financially detrimental to GSWR. While on the trackage rights lines, GSWR is subject to NS dispatching which, through no intentional fault of NS, often causes delays and impairs GSWR's operating efficiencies. Because a portion of its routings are under the dispatching control of another carrier, GSWR is not always able to achieve the overall operating efficiencies that are needed for profitable operations on light-density rail lines.

By reactivating the Line and having direct access to Albany, GSWR would be able to save the trackage rights fee, reduce delays and improve its operating efficiencies.<sup>4</sup> In addition, there are several potential rail customers located along the Line which GSWR would be able to serve. Terrell and Lee Counties support the reactivation project because they see it as a positive step towards economic development in the area. For example, these two counties along with two other neighboring counties are seeking to locate an industrial park along the Line and they consider the availability of rail service to the park as an important step. *See* Exhibit No. 10. Consequently, GSWR would not only be able to reduce costs and improve operations by reactivating rail service on the Line, but would also be able to increase its traffic base.

The current owners of GSWR have had a number of discussions with GDOT during the past two years concerning the reactivation of rail service on the Line. GDOT has one of the

Nation's most pro-active programs of acquiring the assets of light density rail lines in order to preserve rail service on such lines. See e.g., Finance Docket No. 32667, *Georgia Department of Transportation – Acquisition Exemption – Central of Georgia Railroad Company* (not printed), served March 7, 1995; STB Finance Docket No. 33690, *State of Georgia, Department of Transportation – Acquisition Exemption – Line of Central of Georgia Railroad Company* (not printed), served January 6, 1999; STB Finance Docket No. 33876, *State of Georgia, Department of Transportation – Acquisition Exemption – Georgia Southwestern Railroad, Inc.* (not printed), served May 25, 2000. As part of that program, GDOT has tentatively agreed to financially assist GSWR's rehabilitation of the Line.

In the spring of 2002, GSWR contacted RTC to discuss the reactivation of rail service on the Line. An official at RTC informed GSWR that RTC had transferred its rights in the Line to SGR and suggested that GSWR contact SGR. The subsequent discussions and correspondence between GSWR, on the one hand, and RTC and SGR, on the other, have raised the following issues: (1) can a trail user transfer its interest in a rail-banked line to another entity without Board approval and the acquiescence of the railroad entitled to reactivate service; (2) is GSWR the party entitled to reactivate rail service on the Line; and (3) is the interim trail user entitled to compensation as a precondition to the reactivation of rail service.

**RTC AND NOT SGR IS THE APPROPRIATE  
INTERIM TRAIL USER**

As previously noted, the Line was rail banked pursuant to a NITU issued by the Board on behalf of RTC. In addition, GSWR entered into an interim trail use/trail banking arrangement

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<sup>4</sup> GSWR will also reactivate rail service on the Dawson-to-Sasser line.

with RTC pursuant to that NITU. Unbeknownst to GSWR, however, RTC apparently transferred its interests in the Line to SGR in September 2001. A copy of the Deed between RTC and SGR, dated September 26, 2001 and filed in Lee County, GA is attached as Exhibit No. 3.

The Board's rules expressly provide for prior Board approval for the substitution of an interim trail user. Pursuant to the provisions of 49 C.F.R. 1152.29(f), the parties must file a copy of the extant NITU, the prospective user must file a Statement of Willingness to Assume Financial Responsibility, and the parties must indicate the date on which responsibility is to transfer. Docket No. AB-88 (Sub-No. 5X), *Bessemer & Lake Erie Railroad Company – Abandonment Exemption – In Erie County, PA* (not printed), served May 28, 1997. If these requirements are met, the Board will vacate the existing NITU and issue a replacement for the new trail user. Although the rules do not specifically provide for the consent of the railroad that retains the underlying common carrier obligation on the line, such consent for the substitution of the trail user should be required. Cf. STB Docket No. AB-3 (Sub-No. 121X), *Missouri Pacific Railroad Company – Abandonment Exemption – In Morris and Dickinson Counties, KS* (not printed), served April 22, 1996; and STB Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment and Discontinuance Exemption – In Tulare and Fresno Counties, CA* (not printed), served March 26, 1999. At a minimum, a substitution of the trail user should not be allowed over the objection of the railroad.<sup>5</sup>

<sup>5</sup> Simply because a railroad has agreed to interim trail use by one party does not necessarily mean that the railroad would agree to such use of the corridor by another party. Moreover, the transfer from RTC to SGR occurred at the very time that the current stockholders of GSWR, RailAmerica and GDOT were negotiating a multifaceted arrangement which included the potential reactivation of rail service on the Line. Under these circumstances, it is unlikely that GSWR would have consented to the substitution. At a minimum, by seeking GSWR's

RTC's and SGR's failure to comply with the Board's rules raises a number of potentially complicating factors in this proceeding. Where the abandoning railroad seeks to reactive rail service on a rail-banked line, the Board simply vacates the NITU. Here, however, the NITU was issued in favor of RTC which has purportedly transferred all of its interests in the Line to SGR. To date, SGR has taken the position that it has acquired an interest in the Line that the Board cannot take away over its objection. Consequently, if the Board simply vacates the extant NITU, SGR may continue to resist reactivation on grounds that its interests in the Line are beyond Board jurisdiction. Accordingly, GSWR urges the Board to find the conveyance from RTC to SGR void ab initio for failure to comply with the Board's regulations and to require SGR to reconvey to RTC any rights that may have been transferred. Alternatively, the Board could find that SGR simply stepped into the shoes of RTC and that, in revoking the NITU, all of SGR's rights in the Line are extinguished.<sup>6</sup>

**GSWR IS THE REAL PARTY IN INTEREST  
TO REACTIVATE RAIL SERVICE ON THE LINE**

In recent correspondence from SGR's attorney, SGR questioned whether GSWR was the proper successor to RailTex for purposes of reactivation. *See* Exhibit No. 4, page 5, note 1. In *Iowa Power – Const. Exempt. – Council Bluffs, IA*, 8 I.C.C.2d 858, 866-67 (1990) ("*Iowa Power*"), the Board's predecessor, the Interstate Commerce Commission ("Commission"), held that the abandoning carrier was the real party in interest to reactivate rail service on a rail-banked

concurrence, SGR would have been made aware that the Line was likely to be recalled to rail service and that any plans SGR had to construct a trail would not likely see fruition.

<sup>6</sup> The indenture between RTC and SGR, attached as Exhibit No. 3, specifically provides that the transfer was made pursuant to the Trails Act. Consequently, it appears that RTC did not attempt to transfer any rights in the Line greater than those transferred to RTC by GSWR.

line. As previously noted, GGS, an operating division of SCCR, filed a petition for exemption to abandon the Line. At the time the abandonment petition was pending, RailTex filed a notice of exemption to transfer the Line from SCCR to GSWR. After the abandonment petition was granted and the Corporate Family Transaction was consummated, GSWR agreed to rail bank the Line. A copy of one of the Deeds between GSWR and RTC is attached as Exhibit No. 5.<sup>7</sup> Subsequently, GSWR's rail lines were transferred back to SCCR to facilitate the acquisition of the assets of the lines by GDOT. GSWR's interests in the rail-banked Line, however, were not part of the assets transferred from GSWR to SCCR. Nevertheless, out of an abundance of caution, GSWR, contemplating the reactivation of rail service on the Line, insisted that the arrangement between GSWR and SCCR include the transfer from SCCR to GSWR of any interest SCCR may have in the Line. Accordingly, GSWR is the real party in interest to reactivate rail service on the Line.

In *Iowa Power*, the Commission also explained that, where the abandoning party seeks to reactivate rail service on the right-of-way subject to a NITU, no operating or construction authority is required:

“Interim trail use authority, like discontinuance authority, allows a railroad to cease operating a line for an indefinite period while preserving the possibility of renewed rail service in the future. If there is interim trail use, there is no abandonment of the right-of-way for railroad purposes. Rather, the ICC will ‘hold in abeyance its authorization to abandon the right-of-way,’ and the route will remain intact and available for future active rail service.”

*Iowa Power*, at 866, note 12.

<sup>7</sup> The arrangement between GSWR and RTC was memorialized in the Deeds without a separate written agreement.

Accordingly, once the unlawful transaction between RTC and SGR has been voided and RTC has regained the interests in the Line that were transferred to it by GSWR, the Board need simply vacate the extant NITU in order for GSWR to reinstitute rail service on the Line. Alternatively, the Board could find that vacating the NITU extinguishes any rights SGR may have in the Line.

**ABSENT A CONTRACTUAL AGREEMENT TO THE CONTRARY,  
A TRAIL USER IS NOT ENTITLED TO COMPENSATION FOR THE  
REACTIVATION OF RAIL SERVICE**

The most contentious issue between the parties has been the level of compensation, if any, that SGR<sup>8</sup> is entitled to receive before GSWR is permitted to reinstitute rail service on the Line. Throughout the negotiations, GSWR has taken the legal position that the Trails Act and the Board's regulations under that Act do not require the railroad to compensate the interim trail user for the reactivation of rail service on a rail-banked line. Therefore, absent an agreement between the parties to the contrary, the interim trail user may not resist reactivation on grounds that it is entitled to compensation. Nevertheless, GSWR had offered voluntarily to repay any expenses the trail user may have incurred provided that the level of those expenses did not undermine the financial feasibility of restoring profitable rail service on the Line and the parties were otherwise able to agree to the reactivation of rail service on the Line.

On the other hand, SGR strenuously argues that it is entitled to compensation as a prerequisite to reactivation and that GSWR must reach a voluntary agreement with SGR. SGR apparently contends that it has certain property interests in the Line and the Board is without

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<sup>8</sup> Although GSWR does not consider SGR the lawful interim trail user, virtually all of GSWR's discussions regarding compensation have been with SGR.

power to compel the transfer of those interests to GSWR without GSWR paying an amount dictated by SGR. Alternatively, SGR argues that, if the Board is so empowered, SGR is entitled to the constitutional minimum value of the Line. SGR first suggested that GSWR pay the ridiculous sum of \$1,391,250 for the right to reactivate rail service. Subsequently, SGR suggested that GSWR pay SGR the net liquidation value (“NLV”) of the Line pursuant to the Board’s standards under 49 U.S.C. 10904.

As explained below, SGR’s compensation demands are inconsistent with the legal requirements of the Trails Act and fundamentally abhorrent to the policy objectives underlying that Act. Most surprisingly, SGR seems to have adopted arguments that appear indistinguishable from those advanced over the years by groups vehemently opposed to the rails-to-trails program.

Section 1247(d) of the Trails Act provides, in pertinent part, that:

“Consistent with the purposes of [the Railroad Revitalization and Regulatory Reform Act of 1976], and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with [the National Trails System Act], if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.”

16 U.S.C. 1247(d) (emphasis added).

In interpreting this statutory provision, the Commission looked to the statute’s legislative history and observed that the main purpose of this Section was “to remove reversion as an obstacle that hinders or prevents the successful conversion of” rights-of-way for trail use where

the railroad does not own the right-of-way in fee. *Rail Abandonments – Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591, 597 (1986) (“*Rail Abandonments*”).<sup>9</sup>

Moreover, in *Rail Abandonments*, the Commission specifically addressed the compensation issue raised by SGR. The State of Minnesota questioned why anyone would invest in trail development under Section 1247(d), since the right-of-way would be subject to rail reactivation. The Commission explained that Section 1247(d) permits any one of several forms of transfer: donation, transfer, lease, sale, or otherwise. Consequently, “as long as the transfer agreement discloses the status of the involved property, including its being subject to Commission jurisdiction for future restoration of rail service...trail use can occur whether the involved railroad transfers or retains its interest in the right-of-way.” *Id.* at 599.

The Commission went on to explain that the Trails Act may not be the most optimal means of developing trails along a corridor owned in fee by a railroad. The Commission explained that, where a railroad owned a right-of-way in fee, the trail developer should not invoke the Trails Act if it was concerned about losing the corridor to rail reactivation. The Commission instead recommended that the trail developer have the railroad consummate the abandonment and then acquire the rail corridor. As explained by the Commission, if the corridor is acquired outside of the Trails Act process, the trail developer would be at no financial risk if the railroad seeks to reactive service on the right-of-way. *Id.* at 599.

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<sup>9</sup> In this regard, the Commission specifically noted that “Congress intends that trail use occur and rights-of-way remain intact when they otherwise would be subject to reversionary interests.” *Id.* at 597.

Conversely, if the corridor is rail banked under the Trails Act, the trail developer risks the loss of its investment in the right-of-way if rail service is reactivated. As the Commission explained in *Rail Abandonments*:

“[r]ights-of-way developed as trails under section 1247(d) technically do not lose their status as lines of a railroad subject to Commission jurisdiction, because by law they are rail banked and are not treated as abandoned property for purposes of any law. If a railroad intends to permit interim trail use, it will not ‘abandon’ the line, and the property will remain under the Commission’s jurisdiction so that the Commission can, if requested, exercise its regulatory authority to reauthorize rail operations....”

*Id.*

In summary, any agreement to rail bank a rail line can take any one of several forms: the railroad can donate, lease or sell the corridor to the trail user, provided that the transaction is subject to the Trails Act. In turn, if the transaction is subject to the Trails Act, the right-of-way must be subject to rail reactivation regardless of the manner in which the corridor is transferred to the trail user.

SGR’s insistence on compensation appears to be predicated on a misconception of the nature of the interests the abandoning railroad retains and those that a trail user acquires when a right-of-way is conveyed under the Trails Act. In addressing these respective interests, the Commission explained that:

“By consenting to the issuance of a CITU/NITU, a carrier agrees to forgo consummating the authorized or exempted abandonment. As a consequence, its common carrier obligation does not terminate. Instead, the abandoning carrier retains a residual common carrier obligation and transfers the right-of-way to the trail user, subject to the stipulation that the rail corridor remain available for the reinstitution of rail service. A carrier’s decision to agree to a CITU/NITU is totally voluntary and, as far as the Commission is

concerned, may be withdrawn at any time the abandoning carrier wishes to reinstitute rail operations over the right-of-way.”

*N&W – Aban. St. Mary’s & Minster In Auglaize County, OH*, 9 I.C.C.2d 1015, 1018 (1993) (“N&W”).

Regardless of how the right-of-way is transferred, whether by donation or sale, and irrespective of the amount of compensation the railroad receives for any transfer pursuant to a NITU, the trail user simply acquires the right to utilize the corridor for interim trail use until the railroad decides to reinstitute rail operations on the corridor. Where, as here, the abandoning railroad quitclaims the right-of-way to the trail user pursuant to the Trail Act, the trail user’s rights in the corridor are limited to interim trail use. The trail user may not dispose of the right-of-way nor may it utilize the right-of-way in a manner inconsistent with the future restoration of rail service.<sup>10</sup> The Trails Act expressly provides that trail use be “interim” and that such interim use be “subject to restoration or reconstruction for railroad purposes”. 16 U.S.C. 1247(d).

Presumably, an interim trail user can protect its financial interests by entering into an agreement with the abandoning carrier providing for reasonable compensation in the event rail service is reactivated. The agreed upon level of compensation, however, must be reasonable and not undermine the financial feasibility of the reactivation project.<sup>11</sup> Moreover, the interim trail

<sup>10</sup> See STB Docket No. AB-406 (Sub-No. 6X), *Central Kansas Railway, Limited Liability Company – Abandonment Exemption – In Marion and McPherson Counties, KS* (not printed), served December 8, 1999, slip op. at 6. (“Indeed, our chief concern, once a trail condition has been imposed, is whether the statutory rail banking condition has been compromised, precluding a railroad’s ability to reassert control over the right-of-way at some future time to revive rail service.”)

<sup>11</sup> For example, if the parties voluntarily agreed to a compensation level, such as the nearly \$1.4 million requested by SGR, which would erect a financial barrier to reactivation of rail service, presumably the entire arrangement would be viewed as a subterfuge and impermissible use of the

user's right to compensation must be based on an explicit agreement between the interim trail user and the abandoning railroad, since the interim trail user has no statutory or Constitutional right to compensation. Under the Trails Act, the interim trail user's rights are limited to the enjoyment of the corridor until such time, if any, that the railroad seeks to reactivate rail service on the corridor.<sup>12</sup>

RTC's limited interest in the Line is confirmed by the indenture between the parties. The Deed expressly states that the Line was "subject to publication of a [NITU]" and that RTC had requested the use of the Line "for Interim Trail Usage, under the National Trails Systems Act" and that GSWR "has agreed to a conveyance for such purposes". Exhibit No. 5, page 1. The Deed goes on to provide that:

"This Deed is made pursuant to Section 8(d) of the National Trails Systems Act, 16 U.S.C. section 1247(d), and subject to the Trail Use Conditions imposed by the U.S. Surface Transportation Board in STB Docket No. AB-389 (Sub-No. 1X). \*\*\* It is agreed and understood that any conservation/recreation use by Grantee shall

Trails Act since the fundamental purpose of the Act – preserving rail corridors for future rail use – would be circumvented by the agreement. *See* STB Docket No. AB-406 (Sub-No. 6X), *Central Kansas Railway, Limited Liability Company – Abandonment Exemption – In Marion and McPherson Counties, KS* (not printed), served May 8, 2001, slip op. at 3 (Where eventual restoration of rail service has been rendered impossible, the rail banking/interim trail use authority is involuntarily revoked). The Board need not address that issue here since the agreement between the parties does not call for any compensation to the interim trail user in the event GSWR seeks to reactivate rail service.

<sup>12</sup> SGR's contention (at page 5 of the letter attached as Exhibit No. 4) that any Board action compelling the transfer of the Line to GSWR without compensation to SGR constitutes an unconstitutional taking is silly. SGR's rights – if indeed it has any rights in the Line – are in the nature of the reversionary rights GSWR has in the Line. Absent rail banking, GSWR's rights would have been extinguished without compensation upon the consummation of the abandonment. Similarly, any rights SGR may have in the Line will be extinguished upon the vacating of the NITU and SGR will not be entitled to any compensation. In any event, the Board need not address SGR's "taking" argument. More appropriately, SGR can take this argument and stand in line behind adjacent land owners at the United States Court of Federal Claims.

not impair any future restoration of rail service pursuant to the National Trails System Act.”

Exhibit No. 5, page 3. What could possibly more impair the restoration of rail service on a line than permitting the trail user to erect a financial barrier to a successful restoration project!

Since the Line was transferred pursuant to the Trails Act, GSWR could not have conveyed to RTC any rights greater than those authorizing interim recreational use of the Line. *See Iowa Power* at 866. [“When a railroad enters into a Trails Act arrangement, the Commission retains jurisdiction (that it would have otherwise lost) over the right-of-way and the railroad forgoes the ability to dispose of the property in any other way.”] *See also Rail Abandonment – Trails Act – Policy Statement*, 5 I.C.C.2d 370, 375 note 6 (1989). Nor did GSWR transfer to RTC any part of its right to reinstitute rail service on the Line, since such a transfer cannot be made without the explicit approval of the Board. *N&W* at 1018. [The right to reinstitute rail service “does not transfer to the trail user without our explicit approval.”]

SGR claims that the Board’s power over the Line is limited to authorizing rail freight service no different than the Board’s power to authorize such service between any two points. SGR further contends that GSWR may not reinstitute rail service on the Line unless SGR voluntarily agrees to sell its property rights in the Line or GSWR procures the Line through eminent domain. Succinctly stated, SGR takes the position that “it does not follow from the fact that STB issues or re-issues an operating license that STB has any power to compel my client to make its property available to your client for rail purposes, much less to require my client to do so without compensation.” Exhibit No. 4, at 4.

The Board, however, does not need to reauthorize rail service over the Line, since GSWR already possess such authority. *See N&W*, at 1018. (“The right to reinstitute rail service is a common carrier interest that did not exist prior to the Trails Act. \*\*\* [That] right embraces the unextinguished, residual common carrier obligation....”) In *N&W*, the Commission analogized a NITU to a discontinuance of service. In both situations, the carrier is relieved of its obligation to provide rail service while the NITU or discontinuance authority is extant, but at the same time the carrier “retains the line and the residual common carrier obligation....” *Id* at 1019. In order to permit reactivation of rail service on the Line, the Board need do no more than vacate the NITU in this proceeding. By vacating the NITU, all of the property rights that were transferred to RTC are extinguished. *See Birt v. Surface Transportation Board*, 90 F.3d 580, 583 (D.C. Cir. 1996). (Upon reaching rail-banking agreement, the interim trail user “takes over management of the right-of-way, subject to the railroad’s option to reassert control over the line.”) Consequently, GSWR need not negotiate to acquire any property rights from RTC or SGR since neither will have any rights in the Line once the NITU is vacated. Moreover, as previously noted, the vacating of the NITU and the consequent termination of the trail user’s rights in the right-of-way does not constitute a taking requiring compensation under the Fifth Amendment of the Constitution. Accordingly, SGR is not entitled to any compensation from GSWR or the Federal Government as a result of the reactivation of rail service on the Line.

The fundamental objectives of the 1983 amendment to the Trails Act was to encourage trail use on an interim basis and to preserve rail corridors by preventing the reversion of rights-of-way under state law:

“The key finding of this amendment is that interim use of a railroad right-of-way for trail use, when the route itself remains intact for future railroad purposes, shall not constitute an abandonment of such rights-of-way for railroad purposes. This finding alone should eliminate many of the problems with this program. The concept of attempting to establish trails only after the formal abandonment of a railroad right-of-way is self-defeating; once a right-of-way is abandoned for railroad purposes there may be nothing left for trail use. This amendment would ensure that potential interim trail use will be considered prior to abandonment.”

H.R. Rep. No. 98-28, at 8-9 (1983). The dual congressional objectives contained in the Trails Act were articulated by the Court in *Preseault v. ICC*, 494 U.S. 1, 17-18 (1990):

“First, Congress intended to ‘encourage the development of additional trails’ and to ‘assist recreation[al] users by providing opportunities for trail use on an interim basis.’ \*\*\* Second, Congress intended ‘to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use.’”

The only property interests that RTC acquired from GSWR was the interim use of the Line for recreational purposes. Ex Parte No. 274 (Sub-No. 13), *Rail Abandonments – Use Of Rights-of-Way As Trails* (not printed), served February 20, 1985, slip op. at 1. (“The use of the property as a trail is considered an interim use in that the right-of-way always is available for future rail use.”) Since the conveyance was made pursuant to the Trails Act, RTC knew, or should have known, that its interests in the Line were extinguishable if GSWR sought to reactivate rail service on the Line. SGR cannot claim that it has an interest in the Line greater than that acquired by RTC. Indeed, the indenture between RTC and SGR expressly provides that the transfer was being made pursuant to Section 8(d) of the Trails Act. Consequently, the only rights RTC/SGR possesses in the Line are for interim recreational use and those rights are

revocable and potentially transitory. Since RTC's/SGR's rights in the Line are revocable or reversionary upon the termination of the NITU and, therefore, readily extinguishable by GSWR, those rights cannot be deemed to have any value at least not vis-à-vis GSWR. *See Grantwood Village v. Missouri Pacific R.R. Co.*, 95 F.3d 654, 659 (8<sup>th</sup> Cir. 1996)(Quitclaim deed drafted to comply with Trails Act reserves a reversionary interest in the line in the railroad).

SGR claims that it has a substantial investment in the Line and that the Line has substantial value and that in either case it would be unfair and inconsistent with the Trails Act if SGR were not entitled to significant compensation. As already explained, SGR's contention is legally unsound. It appears that the contention is also factually incorrect. In 1997, RTC acquired from GSWR not only the corridor for interim trail use but also all of the track assets on the Line. It appears from GSWR's records that RTC paid to GSWR an amount roughly equivalent to the salvage value of the track assets. Attached as Exhibit No. 6 is a local newspaper article dated April 2, 1998, wherein the then RTC vice president for national policy was quoted as confirming that the cost of purchasing the Line was offset by the amount raised from the salvage of the track and cross ties.<sup>13</sup> Attached as Exhibit No. 7 are 22 current pictures of various sections of the Line. As is readily apparent from these pictures, neither SGR nor RTC have expended any significant sums in establishing a trail on the Line. Not only are large sections of the Line impassable because of weeds but certain sections have barriers erected across the right-of-way. For example, as the 19<sup>th</sup> picture illustrates, there is a fence erected across the right-of-way at Highway 19 and Slappey Boulevard. Since RTC acquired the Line

<sup>13</sup> *See also* the Board's decision in this proceeding served April 16, 1999, at note 14, where the Board confirmed that the tracks had been removed by RTC after the Line was rail banked.

essentially for free and since no trail work has commenced, it appears unlikely that SGR has a substantial investment in the Line.

As to the value of the Line, SGR claims that GSWR owned the line in fee simple and that GSWR deeded that fee simple interest to RTC. Based on a review of a sample of deeds recorded in the three counties in which the Line is located, GSWR is of the view that its interests in the right-of-way are largely, if not totally, reversionary. GSWR's predecessor shared that view. Attached as Exhibit No. 8 is a two-page excerpt from the abandonment application filed by Seaboard System Railroad, Inc. ("Seaboard"), in 1984 for the rail line located between Dawson and Albany. On page 15 of the application, Seaboard stated that "the entire right-of-way is held by easement title and will revert to the respective title holders".

Although SGR now claims that the Line has substantial value, it apparently did not share that view with the local tax assessors. In its Real Estate Transfer Tax Declaration filed in Lee County, where approximately 58 percent of the acreage of the Line is located, SGR stated that the value of the property was \$57,000. A copy of the Declaration is attached as Exhibit No. 9. From SGR's Declaration one can logically draw only one of three conclusions: GSWR did not have fee simple ownership in the 107.78 acres of land along the Line in Lee County; that GSWR did have fee simple ownership but the land has very limited value; or SGR mislead the tax assessor.<sup>14</sup>

Finally, SGR belittles GSWR attempt to reactivate rail service on the Line. For example, SGR states that the reactivation effort may be "simply a ruse to break up the corridor, or a fly-

by-night scheme with no chance of success” and “a misguided attempt to do something objectively uneconomic.” Exhibit No. 4, pages 2 and 3. Again, SGR’s position is legally irrelevant and factually inaccurate. The Board need only review the record in this proceeding to see the widespread opposition to the abandonment request engendered. Moreover, attached as Exhibit No. 10 are eight letters supporting the reactivation of service on the Line. Strongly supporting the reactivation project are the Honorable Mark Taylor, Lieutenant Governor of Georgia, the Honorable Terry L. Coleman, Speaker of the Georgia General Assembly, State Representatives Gerald Greene, Bob Hanner, and Wallace Sholar, the Terrell County Chamber of Commerce, and the Lee County Development Authority. In addition, the Oxford Construction Company, which is located in Albany, GA, and ships about 300,000 tons of aggregate a year by rail, strongly supports GSWR’s efforts to reactivate the Line. Ironically, even counsel for SGR once extolled the virtues of the Line as a rail corridor. In his April 2, 1998 Reply on behalf of RTC in opposition to a petition to revoke the NITU in this proceeding, Mr. Montange stated that: “Indeed, Georgia Department of Transportation viewed the line as a ‘major industrial resource.’ STB decision served August 16 at pp. 4-5. Clearly it is appropriate to preserve for rail banking (future rail reactivation) a line with such distinctive rail transportation value, as already determined by the State of Georgia.” Exhibit No. 11, pages numbered 10-11.

In any event, GSWR is unaware of any statutory or regulatory provision that requires the railroad seeking to reactivate service on a rail-banked line to substantiate or justify the

---

<sup>14</sup> Ironically, GSWR offered voluntarily to pay SGR potentially more than the value of the Line SGR claimed in its Transfer Tax Declarations if SGR had agreed to the reactivation of rail

economics of its project to the interim trail user.<sup>15</sup> As pointed out by the Commission, the NITU “may be withdrawn at any time the abandoning carrier wishes to reinstitute rail operations over the right-of-way.” *N&W* at 1018. In fact, the Commission went on to explain that the abandoning carrier can have the NITU withdrawn for any reason:

“The abandoning carrier may also withdraw from a CITU/NITU should it wish to consummate the abandonment or sell, lease, or otherwise dispose of the right-of-way in a manner inconsistent with trail use.”

*Id.* Consequently, if GSWR’s motive was to break up the corridor, as SGR has suggested, GSWR would not need to go through the ruse of attempting to reactive rail service on the Line. GSWR could simply have requested the Board to vacate the NITU in order to permit GSWR to abandon the Line.

### CONCLUSION

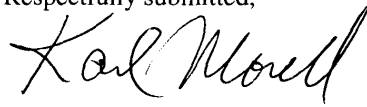
GSWR respectfully requests the Board to vacate the NITU in this proceeding to enable GSWR to reactivate rail service on the Line. Given SGR’s vociferous and strident opposition to the reactivation project, GSWR strongly urges the Board to address the issues raised by SGR. In so doing, GSWR urges the Board to find that: (1) GSWR is the real party in interest to reactivate rail service on the Line; (2) SGR does not have any valid interests in the Line or for the Board to take such other action as is deemed appropriate to ensure that SGR is not successful in preventing the reactivation of service on the Line; and (3) in the absence of any agreement between the

service on the Line.

<sup>15</sup> Once again, in an attempt to accommodate SGR’s concerns, GSWR offered to agree in writing to re-rail banking the Line in the event the reactivation project proved unsuccessful. Even this guarantee was not sufficient for SGR.

parties, neither SGR nor RTC is entitled to any compensation as a result of the reactivation of rail service on the Line.

Respectfully submitted,

A handwritten signature in black ink, reading "Karl Morell". The signature is fluid and cursive, with the first name "Karl" and last name "Morell" clearly distinguishable.

Karl Morell  
Of Counsel  
Ball Janik LLP  
1455 F St., N.W., Suite 225  
Washington, D.C. 20005  
(202) 638-3307

Attorney for:  
GEORGIA SOUTHWESTERN  
RAILROAD, INC.

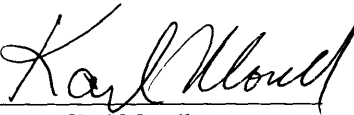
Dated: March 5, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that on March 5, 2003, I have caused the foregoing Petition of Georgia Southwestern Railroad, Inc., to be served, by first class mail, postage prepaid, on the following:

Charles Montange, Esq.  
426 NW 162<sup>nd</sup> Street  
Seattle, Washington 98177  
Counsel for South Georgia Rails To Trails, Inc.

Andrea Ferster, Esq.  
General Counsel  
Rails To Trails Conservancy  
1100 17<sup>th</sup> Street, NW  
10<sup>th</sup> Floor  
Washington, DC 20036

  
Karl Morell

# EXHIBIT NO. 1

20647  
DO

SERVICE DATE

OCT 25 1996

AB  
3

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-389 (Sub-No. 1X)

GEORGIA GREAT SOUTHERN DIVISION, SOUTH CAROLINA CENTRAL  
RAILROAD CO., INC.--ABANDONMENT AND DISCONTINUANCE  
EXEMPTION--BETWEEN ALBANY AND DAWSON, IN TERRELL,  
LEE AND DOUGHERTY COUNTIES, GA

Decided: October 18, 1996

By decision and notice of interim trail use or abandonment (NITU) served August 16, 1996,<sup>2</sup> the Georgia Great Southern Division, South Carolina Central Railroad Co., Inc. (GGS) was exempted from the prior approval requirements of 49 U.S.C. 10903-04 to abandon its 13.62 mile line of railroad between Albany (milepost 86.5) and Sasser (milepost 72.88) and to discontinue service over its 5.36-mile line of railroad between Sasser and Dawson (milepost 67.5), in Terrell, Lee, and Dougherty Counties, GA (collectively the line). Also, a 180-day period was imposed for the Chehaw Parks Authority (Chehaw) to negotiate an interim trail use/rail banking agreement with GGS for the 13.62-mile segment between Albany and Sasser.

By pleading filed September 3, 1996, Rails to Trails Conservancy (RTC) with GGS's consent, requests to be considered as a new negotiation party, under the National Trails System Act (Trails Act), 16 U.S.C. 1247(d) so that it can negotiate with GGS for the use of the line Albany-Sasser portion of the line as a trail. RTC states that it has been advised that Chehaw is no longer able to negotiate an interim trail use/railbanking agreement with GGS. RTC states that in light of Chehaw's decision to discontinue negotiations with GGS, it will assume responsibility for negotiating a trails use agreement with GGS. It submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service. By letter filed September 4, 1996, GGS states that it has been informed that Chehaw has terminated<sup>3</sup> its involvement in negotiations with GGS for trail use. The railroad also states that it will negotiate with RTC for trail use.

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the ICTA.

<sup>2</sup> Notice of the exemption was published in the Federal Register on August 16, 1996 (61 FR 42679).

<sup>3</sup> By letter filed September 13, 1996, Chehaw informed the Board that it is not interested in this proceeding and will not be assuming financial responsibility for the right-of-way.

Because the requirements of section 1152.29 have been satisfied and GGS is willing to enter into negotiations with RTC, a NITU will be issued, with the trail use negotiating period running through February 12, 1997, as requested.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way and the carrier is willing to enter into negotiations. Inasmuch as GGS has not consummated the abandonment and is willing to negotiate with RTC for the right-of-way for portion of the line between milepost 86.5, at Albany and milepost 72.88, at Sasser, a NITU will be issued. The parties may negotiate an agreement until February 12, 1997, as prescribed below. If the parties reach a mutually acceptable final agreement, further Board approval will not be necessary. If no agreement is reached within that time period, GGS may fully abandon the line, provided the conditions imposed in the decision served August 16, 1996, are met. Use of the right-of-way for trail purposes is subject to restoration of rail service and the user's continuing to meet the financial obligation for the right-of-way. See 49 CFR 1152.29(d)(1).

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the decision and notice of interim trail use or abandonment served and published in the Federal Register August 16, 1996, is modified to the extent necessary to implement interim trail use/rail banking, as set forth below until February 12, 1997.
3. Subject to the conditions imposed in the decision and notice served August 16, 1996, GGS may discontinue service, and salvage track and related materials consistent with the interim trail use/rail banking after the effective date of this decision and notice.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case its need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specific date.
7. If an agreement for interim trail use/rail banking is reached by February 12, 1997, interim trail use may be

See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.3d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Milwaukee County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--In Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

STB Docket No. AB-389 (Sub-No. 1X)

implemented. If no agreement is reached by that time, GGS may fully abandon the line, provided the conditions imposed in the decision served August 16, 1996, are met.

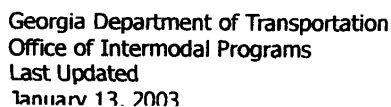
8. This decision is effective on the service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary

## EXHIBIT NO. 2

**understanding**



## EXHIBIT NO. 3

005646

BOOK 567 PAGE 001

✓ RETURN TO: Spencer LeeThis document was prepared by or under  
the direction of Attorney for Grantor:This Deed executed in three (3)  
counterparts, for recording in three (3)  
counties. This is Counterpart No. 2

Cornish F. Hitchcock  
1100 17<sup>th</sup> Street, NW, 10<sup>th</sup> Floor  
Washington, DC 20036  
(Admitted in the District of Columbia;  
not admitted in Georgia)  
(202) 974-5111  
Fax: (202) 331-9680

LEE COUNTY, GEORGIA  
REAL ESTATE TAX  
PAID \$ 57.00  
DATE 10-1-01  
*Cynthia Wescott*  
CLERK OF SUPERIOR COURT  
**DEED**

GEORGIA, LEE COUNTY  
FILED FOR RECORD ON

Oct 1 2001

TIME 1:50 BOOK 567 PAGE 001

RECORDED 10-1-01

*Cynthia Wescott*

ANN E. NIX, CLERK,  
S.C.L.C. GA

THIS INDENTURE, made this 26 day of September, A.D. 2001, between RAILS-TO-TRAILS CONSERVANCY, a District of Columbia non-profit corporation, whose mailing address is 1100 17<sup>th</sup> Street, NW, 10<sup>th</sup> Floor, Washington, DC 20036, hereinafter called "Grantor", and SOUTH GEORGIA RAILS TO TRAILS, INC., a Georgia non-profit corporation, whose mailing address is P.O. Box 3170, Albany, Georgia 31706-1746, hereinafter called "Grantee", WITNESSETH:

WHEREAS, under U.S. Surface Transportation Board Docket No. AB-389 (Sub No. IX), an application to abandon and/or discontinue rail service over said rail corridor was authorized, subject to publication of a Notice of Interim Trail Use, or "railbanking," under 49 C.F.R. § 1152.29; and

WHEREAS Grantor requested to use said rail corridor for Interim Trail Usage, under the National Trails System Act, 16 U.S.C. § 1247(d), and the railroad owning said corridor agreed to a conveyance for that purpose; and

WHEREAS Grantee wishes to develop, manage and utilized said rail corridor for Interim Trail Usage;

NOW THEREFORE, Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, has bargained, sold, quitclaimed, and confirmed, and by these presents does QUITCLAIM, RELEASE, BARGAIN, SELL AND CONFIRM UNTO Grantee all that land and railroad right-of-way situate, lying and being from Milepost 86.5 (Rail Valuation Station 4550+70) in Albany, Georgia ("the Sasser to Albany Line"), consisting of 185.5 acres, more or less, and 13.62 miles in length, all in Dougherty, Lee and Terrell Counties, Georgia, and described in Exhibit A, the rail line or corridor segment in Dougherty County more particularly described on Exhibit A-1, and the rail line or corridor segment in Lee County more particularly described on Exhibit A-2, and the rail line or corridor segment in Terrell County more particularly described on Exhibit A-3, all attached hereto and incorporated herein, hereinafter collectively referred to as the "Premises."

INDEX BOOK 567  
PROPERTY CARD 567  
DEED/PLAT 567  
LINK CARD 567  
NUMBER 567  
PAGE 567

TOGETHER WITH all buildings, structures, fixtures, improvements thereon, including personal property owned by Grantor in, or used in connection with, operating, possessing, and/or enjoying the Premises, whether attached or unattached thereto, including all rails, ties, ballast, track materials, bridges, trestles, culverts, signals, cross protection devices, communication lines and poles, loading platforms, switches and other rail operating facilities (sometimes called "Rail Facilities") in, on, over, or under the Premises, and all and singular the rights, alleys, ways, waters, privileges, hereditaments, and appurtenances to said Premises belonging or in any way incident or appertaining, including connecting easement rights in Dougherty County, as described on Exhibit A-1 and any and all rights to cross or lay tracks in any streets adjacent to or connecting any parcels of the Premises herein conveyed.

The premises being a portion of the same property conveyed to Grantor by Georgia Southwestern Railroad, Inc., by deeds dated October 14, 1997 and recorded in Deed Book 1747, Pages 212 through 224, of the records of the Clerk of Superior Court for Dougherty County; Deed Book 311, Pages 195 through 207 of the records of the Clerk of Lee County; and Deed Book 5-C, Pages 614 through 626 of the Clerk of Terrell County, Georgia.

TO HAVE AND TO HOLD the Premises and all the estate, right, title, lien, interest and claim whatsoever of Grantor, either in law or equity, unto the proper use, benefit and enjoyment of Grantee, Grantee's successors and assigns, so that neither Grantor nor any person(s) claiming under Grantor shall at any time, by any means or ways, have, claim, or demand any right or title to the Premises or appurtenances, or any rights thereof.

SUBJECT TO those rights or easements, if any, heretofore granted by Grantor, or reserved or granted by its predecessors in title, for any surface, sub-surface or aerial uses antedating this conveyance, including, but not limited to, the construction, maintenance, operation, renewal and/or location of pipelines, communications lines, power lines, and any and all appurtenances applicable thereto, and/or to any other interests in the Premises heretofore granted by Grantor on, in and to the Premises, and to any such interests reserved to other parties in instruments granted to Grantor or its predecessors in title, and to all other rights, easements, obligations, reservations, encumbrances, ways and servitudes, howsoever created, and the terms, conditions or limitations thereof.

FURTHER SUBJECT TO any and existing obligations under franchises, ordinances or agreements to fix or repair any streets or roads crossed by the tracks within the Premises and/or any duties or obligations to remove tracks from streets or roads within the Premises; Grantee expressly assuming all such obligations and/or duties, such assumption to run with title to the Premises and bind Grantee, its successors and assigns.

THIS QUITCLAIM IS MADE ON AN "AS IS, WHERE IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED, CONCERNING THE TITLE OF OR CONDITION OF SAID PREMISES, AND GRANTEE HEREBY SPECIFICALLY WAIVES ALL LAWS OF REMEDIATION AND THE IMPLIED WARRANTIES PROVIDED FOR AND BY LAW, INCLUDING ANY AND ALL WARRANTIES AGAINST DEFECTS OF TITLE OR WARRANTIES REGARDING FITNESS FOR ANY PARTICULAR USE OR PURPOSE

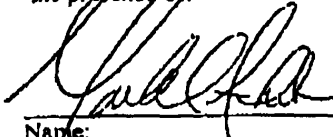
WHATSOEVER.

This Deed is made pursuant to Section 8(d) of the National Trails System Act, 16 U.S.C. Section 1247(d), and subject to the Trail Use Conditions imposed by the United States Surface Transportation Board in STB Docket No. AB-389 (Sub No. 1X). Grantee assumes all financial, managerial and legal responsibility and liability for use of the Premises, and agrees to defend indemnify and hold Grantor harmless therefor. It is agreed and understood that any conservation/recreation use by Grantee shall not impair any future restoration of rail service pursuant to the National Trails System Act.

Whenever the terms "Grantor" and "Grantee" are used in this Deed, such terms shall be deemed to include the successors and assigns of said parties.

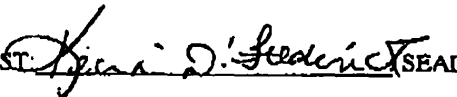
IN WITNESS WHEREOF Grantor has caused this Deed to be executed and sealed, in three (3) counterparts, the day and year first written above.

Signed, sealed and delivered in the presence of:

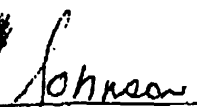
  
Name: \_\_\_\_\_  
Nonofficial witness

RAILS-TO-TRAILS CONSERVANCY

By:   
Keith Laughlin  
President

ATTEST:  (SEAL)  
Name: \_\_\_\_\_  
Assistant Secretary

STATE OF MISSOURI  
COUNTY OF ST. LOUIS

 Subscribed and sworn before me this  
10 day of September, 2001  
  
Notary Public  
My Commission Expires 8/31/03

STACI JOHNSON  
Notary Public - State of Missouri  
City of St. Louis  
My Commission Expires Aug 31, 2003

EXHIBIT A1. Dougherty County:

That 2.62 mile right-of-way and real property interests situate, lying and being in Dougherty County, between a point at or in Albany, Georgia (Rail Milepost SLB 86.5, Rail Valuation Station 4550+70) and the Dougherty/Lee County Line (Rail Milepost SLB 83.88, Rail Valuation Station 4409+10), including the easement and rights reserved by Georgia Southwestern Railroad, Inc. in two separate deeds as follows:

- (a) Quit Claim Deed, dated July 11, 1996, to Bruce Properties Partnership, recorded in the Dougherty County Land Records in Deed Book 1611, Page 86; and
- (b) Quit Claim Deed, dated August 14, 1995, to Bruce Properties Partnership, recorded in the Dougherty County Land Records in Deed Book 1514, Page 329;

with End Points shown on Exhibits A-1A and A-1B, attached hereto and incorporated herein; All as shown in particular on Railroad Valuation Section Map V2-Ga/L-17, Sheets 22 and 23, incorporated herein by reference; and containing 37.01 acres, more or less (net after Bruce Properties Conveyances).

2. Lee County:

That 7.71 mile right-of-way and real property interests situate, lying and being in Lee County, between the Dougherty/Lee County Line (Rail Milepost SLB 83.88, Rail Valuation Station 4409+10) and the Lee/Terrell County Line (Rail Milepost SLB 76.17, Rail Valuation Station 3984+40), with End Points shown on Exhibits A-2A and A-2B, Section Map V2-Ga/L-17, Sheets 20 through 22, incorporated herein by reference; and containing in all 107.78 acres, more or less.

3. Terrell County:

That 3.29 mile right-of-way and real property interests situate, lying and being in Terrell County, between the Lee/Terrell County Line (Rail Milepost SLB 76.17, Rail Valuation Station 3984+40) and a point at or near Sasser, Georgia (Rail Milepost SLB 72.88, Rail Valuation Station 3828+21.9), with End Points shown on Exhibits A-3A and A-3B, attached hereto and incorporated herein; All as shown in particular on railroad Valuation Section Map V2-Ga/L-17, Sheets 19 and 20, incorporated herein by reference; and containing in all 40.80 acres, more or less.

# EXHIBIT NO. 4

CHARLES H. MONTANGE

ATTORNEY AT LAW

426 NW 162ND STREET

SEATTLE, WASHINGTON 98177

(206) 546-1936

FAX: (206) 546-3739

18 December 2002

Karl Morell, Esq.  
Ball Janik  
1455 F Street, NW, Suite 225  
Washington, D.C. 20005

Re: your letter of December 12, 2002  
Albany to Sasser, Georgia

Dear Mr. Morell:

Your letter of 12 December, which I received yesterday, is the first written communication which I have received from you in connection with Albany to Sasser. As I believe that I conveyed to you on the one telephone conversation relating to this which we had some time ago, no reasonable executive or attorney representing a corporate entity (whether for-profit or non-profit) would or lawfully could simply donate property to some unknown third party based on oral representations of the party to whom the donation is to be made as to the purpose of the donation, or without review of other relevant law and facts. Your letter of December 12, 2002, is the first written communication by you to me, or to anyone so far as I can tell, at Rails to Trails Conservancy (RTC) or my client, South Georgia Rails to Trails.

Since your letter indicates you wish to pursue the matter, I have attempted to collect relevant papers and documents so I can better understand the legal situation. I note in this regard that I am aware at this time of no documentation from your client concerning its positions. I normally would prefer more time to study the situation, but it appears necessary to respond to you now because your letter seems to threaten legal action at any time, and it further appears to misunderstand how the process works as well as the issues involved. Moreover, I believe that the course you chart will not be helpful to preserving this corridor intact, either for rail use or trail use. I would necessarily reserve the right to modify the statements in this letter based on the results of my investigation.

Your letter characterizes me as making "demands." I assure you, Mr. Morell, that my intent was only to suggest that it is customary for people approached by someone demanding (as you are) the donation of real estate to inquire into the purpose for

the demand, and to seek at least the minimum constitutional value of the property in question. I seldom state demands unless demands are made of me.

It is my understanding that RTC paid substantial consideration to Railtex for the rail corridor between Albany and Sasser, Georgia. It is further my understanding that my client has acquired RTC's underlying interests in the real estate for substantial consideration, and otherwise has a substantial investment in this property. You claim on the basis of hearsay that the underlying property was reversionary. My client informs me that deeds it has examined to date indicate that major portions of the corridor are fee. In any event, ICC/STB at the request of RTC, with consent of Railtex, issued an order allowing interim trail use on the property per 16 U.S.C. § 1247(d). My client has interests sufficient for trail use throughout the property, for which it paid valuable consideration. Those rights have substantial value.

ICC (and STB) regard interim trail agreements between a railroad and a trail manager as voluntary. Other than requiring the trail operator to assume managerial, legal, and tax responsibility, ICC/STB leaves the terms of an interim trail agreement to the parties. RTC entered into a contract with Railtex for all Railtex's interests, and RTC received a quitclaim deed to all those interests in return. It is further my understanding that neither the deed nor any contract between RTC and Railtex provides for RTC or its successor in interest to donate or otherwise transfer at a discount, let alone for free, the rail corridor to Railtex or any successor or assignee on demand.

Consistent with 16 U.S.C. § 1247(d), my client is prepared to make the corridor available for bona fide freight rail reactivation. Because RTC and South Georgia Rails to Trails have a duty to manage the property for trail and railbanking purposes, the parties must ensure that the transfer is in accordance with those purposes and not simply a ruse to break up the corridor, or a fly-by-night scheme with no chance of success which in the end may simply result in break up of the corridor. The file seems to suggest that the trail operator has suggested several times that your client take some lesser interest in the property (e.g., an easement) consistent with ensuring that the property is never broken up. Anyway, negotiations to date seem to have revolved around concern that rail reactivation here does not make any sense.

Your letter indicates that your client is, evidently for the first time, now agreeable to railbank the property in the event your reactivated service is unsuccessful. I believe that commitment will be very helpful in ensuring the trail operator and allied parties that this effort to reactivate is not simply

a ruse. The reactivation may still be a misguided attempt to do something objectively uneconomic, but at least the corridor will be railbankable again in that event when the attempt fails. We would wish to incorporate this commitment in an appropriate fashion in any agreement between us.

It also would be helpful for you to identify a contact person at the Georgia Department of Transportation to corroborate that GDOT in fact is prepared, as your letter seems to suggest, to subsidize reconstruction of rail on the premises. Based on the representations at p. 2 of your letter on why your client wishes to reactivate, it looks like your client's chief concern is simply to avoid being subject to NS dispatch. Because of the configuration of this corridor, I am told that it is unlikely that your client can avoid being subject to NS dispatch, or that the line would ever be a viable through route due to road crossings. In any event, my client is aware of no facts suggesting that reactivation would make economic sense given the lack of shippers on the line unless GDOT picked up all your costs to reconstruct the rail. GDOT's corroboration that it is bearing your costs would perhaps demonstrate that costs are irrelevant such that there might be at least speculative value in reactivating rail service on this line.

That having been said, one is still left with the question of compensation. In the absence of any contractual provision requiring that RTC or its successor surrender its property interest for free, it is incumbent upon your client to reach a voluntary agreement for compensation with the property owner. If interim trail managers who acquired rail property by quitclaim deed simply had to surrender their property for free, 16 U.S.C. § 1247(d) would be a nullity, for no one could invest in their corridor with any expectation of security in investment; that is, they could lose everything at (under your theory) the whim of anyone who wishes to operate a freight railroad, even if the railroad makes no economic sense, or perhaps even at the whim of anyone who asserts that they might wish to reactivate the line.

If railroads desire conditions allowing them to reclaim railbanked corridors for free, they provide such conditions in their railbanking agreements with interim trail managers. The interim trail managers generally respond to requests for no- or low-cost re-conveyance clauses in railbanking agreements by obtaining negotiated protection for their investment. I state this by way of saying that your demand for a donation is completely inconsistent with almost 20 years of experience and practice under 16 U.S.C. § 1247(d), completely overlooks the fact that railroads and trail managers make provision for reactivation at less than market value up front, and would be ruinous to the railbanking program by upsetting investment-backed expectations. Moreover, your approach is totally

unnecessary to accomplish rail reactivation objectives or to protect railroad rights to reactivate. Railroads protect their objectives by negotiating reactivation terms at the time of railbanking if they do not wish to pay voluntarily negotiated amounts at the time of reactivation.

ICC and now STB construe 16 U.S.C. § 1247(d) railbanking agreements to be voluntary matters. The federal agency does not adjust the amount or terms of compensation between the trail user and the railroad; to the contrary, the parties arrive at those terms voluntarily. Consistent with that construction, your client should reach a voluntary agreement for compensation with my client for the property interests you now demand. In order to ensure to you that this is not some ruse on our part to impair freight rail reactivation, we are prepared to agree that the valuation for the property may be on the same principles as those employed by STB in implementing "offers of financial assistance" under 49 U.S.C. § 10904: that is, the minimum constitutional value. After all, if railroads must pay minimum constitutional value to each other under what admittedly is a condemnation statute (§ 10904), a railroad should pay at least that to the interim trail entity under what ICC and STB insist is not a condemnation statute (§ 1247(d)).

We have no doubt that STB has power to authorize a bona fide freight railroad (which was the original railroad that sought abandonment authorization) to reactivate service on the Albany to Sasser corridor, in the same fashion that STB has power to authorize rail service between any two points. However, this does not then mean that property owner(s) between the two points automatically must transfer, much less donate, their property to whatever railroad that STB authorizes to provide rail service, or to any railroad at all. Rather, the railroad has to acquire the property interests which it requires to operate either by voluntary negotiation or through use of whatever state law eminent domain powers are available to it. In other words, it does not follow from the fact that STB issues or re-issues an operating license that STB has any power to compel my client to make its property available to your client for rail purposes, much less to require my client to do so without compensation.

If STB authorizes rail reactivation, then your client either must enter into a voluntary agreement satisfactory to my client to acquire property interests from us sufficient to support your rail use, or your client must employ state law eminent domain remedies (if there are any) to acquire my client's interest in the property. Care may be needed if the latter course is pursued. If you do something to destroy the railbanking certificate without having a deal in place with my client, I am concerned that reversionary interest holders whom you claim (on the basis of hearsay) own the line may assert that

the line no longer exists because the railbanking order has been lifted and your client owns no interest in the line. Then you would have to employ state-law eminent domain to re-assemble the corridor, and my client would likely pursue legal claims against your client for destruction of its property interests and related claims. In any event, if your client institutes condemnation proceedings, my client reserves the right to seek compensation for all fee, railroad and trail interests which it owns in the corridor.

Even assuming arquendo that STB has power to compel a transfer of the property to your client, if STB did so without providing for compensation to my client at least at the minimum constitutional value, then an unconstitutional taking would have resulted. My client reserves all its rights in that respect as well.

I understand that Mr. McCormack suggested a price of \$1,391,250 in response to your oral inquiry. If your client is genuinely interested in pursuing rail reactivation, we suggest viewing that as our starting point. We would be prepared to negotiate compensation based on STB's approach of minimum constitutional value under 49 U.S.C. § 10904. We would likewise be prepared to abide by the results of a mutually agreeable, competent appraiser acting under acceptable instructions. We ask that your client share in the costs of such an appraisal should you elect this route.

Should you proceed with reactivation at STB without reaching terms with my client, please be aware that you still are without any ownership interest whatsoever in the rail corridor.<sup>1</sup> Any entry by your client or its agents on my client's property without my client's consent would be a trespass and/or wrongful conversion. We would further reserve the right to seek compensation and other relief for any impairment of the value of the property to us by your client, or by your client's actions or representations at the STB.

If you file anything with the STB (you seem to say you are but you do not indicate what), please forward a copy to me forthwith. My fax is 206-546-3739. Please also inform STB that you have not taken time to engage in good faith negotiations with my client on the important issues identified herein. We reserve our rights to take any position we deem appropriate at the STB, depending upon your client's actions there.

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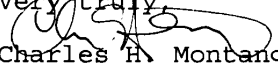
<sup>1</sup> At this time, I do not know that your client is the proper successor to Railtex for purposes of reactivation. We reserve all our rights in this connection.

We remain prepared to negotiate. Again, we are supportive of efforts to achieve a bona fide rail reactivation. However, like any other corporate entity, South Georgia Rails to Trails cannot simply give-away its assets for non-charitable purposes.

I have supplied a copy of this letter to Rails to Trails Conservancy, and am authorized to state that RTC concurs in the positions taken in this letter.

Happy holidays.

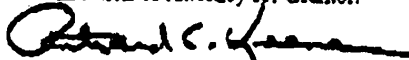
Very truly,

  
Charles H. Montange  
for South Georgia Rails to Trails,  
Inc.

cc. Greg McCormack (SGRT)  
Andrea Ferster, Esq. (RTC-GC)

# EXHIBIT NO. 5

This document was prepared by or under  
the direction of Attorney for Grantor:



Richard C. Keene, Attorney, P.A.  
800 Third Street  
Neptune Beach, FL 32266  
(904) 247-1600  
(Fax) 247-1696

This Deed executed in three (3)  
counterparts, for recording in three  
(3) counties: This is Counterpart  
No. 1.

#### DEED

THIS INDENTURE, made this 14<sup>th</sup> day of October, A.D.,  
1997, between GEORGIA SOUTHWESTERN RAILROAD, INC., a Delaware  
corporation, whose mailing address is 908 Elm Avenue, Americus, Georgia 31709,  
hereinafter called "Grantor," and RAILS TO TRAILS CONSERVANCY, a nonprofit  
corporation organized under the laws of the District of Columbia, whose mailing address  
is 1100 Seventeenth Street, N.W. (10<sup>th</sup> Floor), Washington, D.C., 20036, hereinafter  
called "Grantee," WITNESSETH:

WHEREAS, Grantor has operated a certain line of railroad or rail transportation  
corridor between Albany and Sasser, Georgia, for many years, but such operation has  
recently proven unprofitable; and

WHEREAS, under U. S. Surface Transportation Board Docket No. AB-399 (Sub  
No. 1X), application to abandon and/or discontinue rail service over said rail corridor was  
authorized, subject to publication of a notice of interim trail use or rail banking, under  
C.F.R. 1152.29; and

WHEREAS, Grantee has requested to use said rail transportation corridor for  
Interim Trail Usage, under the National Trails Systems Act, 16 U.S.C. 1247(d), and  
Grantor has agreed to a conveyance for such purposes;

NOW THEREFORE, Grantor, for and in consideration of the sum of Three  
Hundred Thousand Dollars (\$300,000.00), and other valuable consideration, a portion of  
which represents the contribution benefit of the excess value of the Premises, the receipt  
whereof is hereby acknowledged, has bargained, sold, quitclaimed and confirmed, and by  
these presents does QUITCLAIM, RELEASE, BARGAIN, SELL, and CONFIRM unto  
Grantee, all that land and railroad right-of-way situate, lying and being from Milepost  
72.88 (Rail Valuation Station 3828 + 21.9) in Sasser, Georgia, to Milepost 86.5 (Rail  
Valuation Station 4550+70) in Albany, Georgia ("the Sasser to Albany Line"),  
consisting of 185.5 acres, more or less, and 13.62 miles in length, all in Terrell, Lee and  
Dougherty Counties, Georgia, and described generally in Exhibit A, the rail line or  
corridor segment in Dougherty County more particularly described on Exhibit A-1, and

the rail line or corridor segment in Lee County more particularly described on Exhibit A-2, and the rail line or corridor segment in Terrell County more particularly described on Exhibit A-3, all attached hereto and incorporated herein, hereinafter collectively referred to as "the Premises."

TOGETHER WITH all buildings, structures, fixtures, improvements thereon, including personal property owned by Grantor in, or used in connection with, operating, possessing, and/or enjoying the Premises, whether attached or unattached thereto, including all rails, ties, ballast, track materials, bridges, trestles, culverts, signals, crossing protection devices, communication lines and poles, loading platforms, switches and other rail operating facilities (sometimes called "Rail Facilities") in, on over or under the Premises, and all and singular the rights, alleys, ways, waters, privileges, hereditaments and appurtenances to said Premises belonging or in any way incident or appertaining, including connecting easement rights in Dougherty County, as described on Exhibit A-1 and any and all rights to cross or lay tracks in any streets adjacent to or connecting any parcels of the Premises herein conveyed.

The Premises being a portion of the same property conveyed by RailTex, Inc. to Georgia Southwestern Railroad, Inc. by deed dated July 1, 1995, recorded in Deed Book 1514, Pages 327-328, of the records in the office of the Clerk of Superior Court for Dougherty County, and Deed Book 215, Pages 78-79, of the records of the Clerk of Lee County, and Deed Book 4Q, Pages 258-259 of the records of the Clerk of Terrell County, Georgia.

TO HAVE AND TO HOLD the Premises and all the estate, right, title, lien, interest and claim whatsoever of Grantor therein, either in law or equity, unto the proper use, benefit and enjoyment of Grantee, Grantee's successors and assigns, so that neither Grantor nor any person(s) claiming under Grantor shall at any time, by any means or ways, have, claim, or demand any right or title to the Premises or appurtenances, or any rights thereof.

SUBJECT TO those rights or easements, if any, heretofore granted by Grantor, or reserved or granted by its predecessors in title, for any surface, sub-surface or aerial uses antedating this conveyance, including but not limited to, the construction, maintenance, operation, renewal and/or relocation of pipelines, communications lines, power lines, and any and all appurtenances applicable thereto, and/or to any other interests in the Premises heretofore granted by Grantor on, in and to the Premises, and to any such interests reserved to other parties in instruments granted to Grantor or its predecessors in title, and to all other rights, easements, obligations, reservations, encumbrances, ways and servitudes, howsoever created, and the terms, conditions or limitations thereof.

FURTHER SUBJECT TO any and existing obligations under franchises, ordinances or agreements to fix or repair any streets or roads crossed by the tracks within the Premises and/or any duties or obligations to remove tracks from streets or roads within the Premises; Grantee expressly assuming all such obligations and/or duties, such

assumption to run with title to the Premises and bind upon Grantee, its successors and assigns.

THIS QUITCLAIM IS MADE ON AN "AS IS, WHERE IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED, CONCERNING THE TITLE OF OR CONDITION OF SAID PREMISES, AND GRANTEE HEREBY SPECIFICALLY WAIVES ALL LAWS OF REMEDIATION AND THE IMPLIED WARRANTIES PROVIDED FOR AND BY LAW, INCLUDING ANY AND ALL WARRANTIES AGAINST DEFECTS OF TITLE OR WARRANTIES REGARDING FITNESS FOR ANY PARTICULAR USE OR PURPOSE WHATSOEVER.

This Deed is made pursuant to Section 8(d) of the National Trails Systems Act, 16 U.S.C. Section 1247(d), and subject to the Trail Use Conditions imposed by the U. S. Surface Transportation Board in STB Docket No. AB-389 (Sub No. 1X). Grantee assumes all financial, managerial and legal responsibility and liability for use of the Premises, and agrees to defend, indemnify and hold Grantor harmless therefor. It is agreed and understood that any conservation/recreation use by Grantee shall not impair any future restoration of rail service pursuant to the National Trails System Act.

Whenever the terms "Grantor" and "Grantee" are used in this Deed, such terms shall be deemed to include the successors and assigns of said parties.

IN WITNESS WHEREOF Grantor has caused this Deed to be executed and sealed, in three (3) counterparts, the day and year first above written.

Signed, sealed and delivered  
in the presence of:

[Signature]  
Nonofficial Witness

Georgia Southwestern Railroad, Inc.

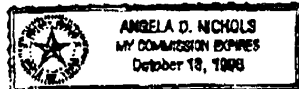
By: [Signature]  
Print Name: Layton D. Davies  
Print Title: Vice President

[Signature]  
Notary Public

ATTEST: [Signature] (SEAL)  
Asst. Secretary  
Print Name: Vivian Hitchcock

Notarized this 14<sup>th</sup> day of  
October, 1997.

My Commission Expires:



# EXHIBIT NO. 6



DON STALVEY/staff

Hal Hiemstra, vice president of national policy for the National Rails-to-Trails Conservancy, talks with conservancy officials during a walk along the Albany trail at Fussell Road.

## Salvage defrays trail cost

### Corridor nearly ready for use, says official

4/2/98 Jane Seccombe  
STAFF WRITER

The sale of old tracks and cross ties salvaged from the railroad corridor between Albany and Sasser has raised about \$100,000, offsetting the cost of purchasing the property for use as a trail, members of the Washington D.C.-based Rails-to-Trails Conservancy said Wednesday.

It is likely the conservancy will transfer ownership of the 13.6-mile corridor to the newly formed South Georgia Rail to Trails Inc. at minimal cost, said Hal Hiemstra, the national conservancy's vice president of national policy.

Hiemstra was in Albany to inspect the salvage work, along with Simon Sidamon-Eristoff, the conservancy's attorney, and Jeffrey Lombardi, its program coordinator in Florida.

The local group, which will be responsible

for raising money to develop and maintain the corridor as a pedestrian and bicycle trail, is holding an open house for interested people along a 1.3-mile segment of the property on April 11.

Apart from the removal of the tracks and ties, the corridor has also been graded and cleared, Hiemstra said.

"The corridor is literally a few months away from being used," he said.

Hiemstra said there is a strong market for old railroad parts.

"We try to get corridors with tracks and ties in place so we can use them to defray costs. Often that's not possible because the rail companies realize the value themselves," he said.

The ties are sold to landscaping companies while the tracks are often bought by steel companies, which melt them down to produce wrought iron fences. "If the iron is good enough, it's shipped and

Please see Cost, 4A

# Cost

4/2/78

Continued from 1A

sold overseas. It's the ultimate in recycling," Hiemstra said.

The conservancy has left a deep layer of ballast on the track as "an endowment" to the local group, which could choose to sell it to road construction companies or keep it as a base for the asphalt trail, he said.

"There is a lot of value in the crushed rock because there are prohibitions against strip mining," he said.

Greg McCormack, a South Georgia Trails to Trails member,

said the organization has applied for 501-3C nonprofit status and will start a fund-raising campaign within the next few months.

He is using a rough estimate of \$67,000 per mile to build the trail.

"My intent would be to raise twice that for maintenance. Whatever we raise, we intend to apply for transportation funds," he said.

Hiemstra said \$1.2 billion of transportation enhancement program funds has been invested in rail track development and bicycle and pedestrian facilities across the county over the past six years. A new transportation bill before Congress sets aside \$3.9 billion over the next six years for projects like the one proposed in Albany, he said.

"Albany will have to apply for these funds, but there is no reason this won't be considered a high priority," he said.

McCormack said the local group also needs money to market the trail.

Opposition to the public trail by Terrell and Lee counties and landowners near the corridor could be overcome when people see how the trail develops, McCormack and Hiemstra said.

"A lot of the problem is the political opposition, at the behest of some of the individual opponents," McCormack said. "I think when they see public support for the trail, the political support will follow."

The Albany City Commission turned down a request for funds to buy the corridor last year.

Hiemstra said phased development that would allow people to see the value of the project could help build support, as well as discussion of issues of concern such as potential crime and littering.

The conservancy, which was formed 12 years ago, has helped

to preserve 10,000 miles of rail corridor for conversion ~~and~~ trails. Projects totaling another 8,000 miles are in the pipeline, Hiemstra said.

The trail idea is relatively new to Georgia, with only ~~three~~ across 22 miles open for use, ~~he~~ added.

Hiemstra said an attractive feature of the proposed local trail is that it will link up with Albany's plan to develop a network of trails along the Flint River.

"The trail becomes an integral part of a more liveable community," he said.

Communities need outdoor recreation and alternative modes of transport, he said. "Albany can lead the way," he said.

# EXHIBIT NO. 7

PHOTO LOG  
GEORGIA SOUTHWESTERN RAILROAD, INC.  
SGT- TRAIL SASSER TO ALANY, GA

February 17, 2003



CHAIN GANG RD

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CHAIN GANG RD

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PHOTO LOG  
GEORGIA SOUTHWESTERN RAILROAD, INC.  
SGT- TRAIL SASSER TO ALANY, GA

February 17, 2003



HEAD RD



HEAD RD

PHOTO LOG  
GEORGIA SOUTHWESTERN RAILROAD, INC.  
SGT- TRAIL SASSER TO ALANY, GA

February 17, 2003



AR MENA



AR MENA

PHOTO LOG  
GEORGIA SOUTHWESTERN RAILROAD, INC.  
SGT- TRAIL SASSER TO ALANY, GA

February 17, 2003



OAKLAND RD



OAKLAND RD

PHOTO LOG  
GEORGIA SOUTHWESTERN RAILROAD, INC.  
SGT- TRAIL SASSER TO ALANY, GA

February 17, 2003



FUSSELL RD



FUSSELL RD

PHOTO LOG  
GEORGIA SOUTHWESTERN RAILROAD, INC.  
SGT- TRAIL SASSER TO ALANY, GA

February 17, 2003



FUSSELL RD



LEDO RD

PHOTO LOG  
GEORGIA SOUTHWESTERN RAILROAD, INC.  
SGT- TRAIL SASSER TO ALANY, GA

February 17, 2003



LEDO RD



LEDO RD

PHOTO LOG  
GEORGIA SOUTHWESTERN RAILROAD, INC.  
SGT- TRAIL SASSER TO ALANY, GA

February 17, 2003



EAST OF PALMYRA (BETWEEN LEDO & SLAPPEY)



EAST OF PALMYRA (BETWEEN LEDO & SLAPPEY)

PHOTO LOG  
GEORGIA SOUTHWESTERN RAILROAD, INC.  
SGT- TRAIL SASSER TO ALANY, GA

February 17, 2003



HWY 19 / SLAPPEY BLVD



HWY 19 / SLAPPEY BLVD

PHOTO LOG  
GEORGIA SOUTHWESTERN RAILROAD, INC.  
SGT- TRAIL SASSER TO ALANY, GA

February 17, 2003



HWY 19 / SLAPPEY BLVD



HWY 19 / SLAPPEY BLVD

PHOTO LOG  
GEORGIA SOUTHWESTERN RAILROAD, INC.  
SGT- TRAIL SASSER TO ALANY, GA

February 17, 2003



HWY 19 / SLAPPEY BLVD



HWY 19 / SLAPPEY BLVD

# EXHIBIT NO. 8

**BEFORE THE  
INTERSTATE COMMERCE COMMISSION**

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**DOCKET NO. AB-55 (SUB-NO. 131)**

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**APPLICATION OF SEABOARD SYSTEM RAILROAD, INC.  
TO ABANDON 20.18 MILES OF RAILROAD  
BETWEEN DAWSON AND NORTH ALBANY IN LEE,  
DOUGHERTY AND TERRELL COUNTIES, GEORGIA**

---

**PHIL C. BEVERLY  
General Attorney  
500 Water Street  
Jacksonville, Florida 32202  
Telephone: (904) 359-1240**

**Attorney for Applicant**

**December 5, 1984**

- (5) Statement of whether the properties proposed to be abandoned are suitable for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restrictions on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

Applicant contends that this property is unsuitable for other public purposes as the entire right-of-way is held by easement title and will revert to the respective title holders.

(f) Environmental Impact

The applicant shall submit as a part of its abandonment or discontinuance application full and complete information with regard to the environmental impact of the proposed abandonment or discontinuance in compliance with 49 C.F.R. 1105.7(b) and (c). If certain information required by the environmental regulations duplicates wholly or in part information required elsewhere in an abandonment or discontinuance application, the environmental information requirements may be met by a direct and specific reference

# EXHIBIT NO. 9

| P141 (Rev. 10/92)                                                                                                                                                                                                                   |  | REAL ESTATE TRANSFER TAX DECLARATION |  | (PLEASE TYPE OR PRINT) |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------|--|------------------------|--|
| <b>SECTION A - SELLER'S INFORMATION</b>                                                                                                                                                                                             |  |                                      |  |                        |  |
| 1. NAME<br>DANIEL TO TRINIZES CONSTRUCTION                                                                                                                                                                                          |  |                                      |  |                        |  |
| 2. MAILING ADDRESS (STREET & NUMBER)<br>1100 17th ST N.W. 10th Floor                                                                                                                                                                |  |                                      |  |                        |  |
| 3. CITY, STATE, ZIP CODE<br>WASHINGTON D.C. 20036                                                                                                                                                                                   |  |                                      |  |                        |  |
| 4. DATE OF SALE<br>9/26/01                                                                                                                                                                                                          |  |                                      |  |                        |  |
| <b>SECTION B - BUYER'S INFORMATION</b>                                                                                                                                                                                              |  |                                      |  |                        |  |
| 1. NAME<br>Griffiths & Paul to Truitt, Inc                                                                                                                                                                                          |  |                                      |  |                        |  |
| 2. MAILING ADDRESS FOR TAX NOTICES (BILL, ETC.) (STREET & NUMBER)<br>PO BOX 3170                                                                                                                                                    |  |                                      |  |                        |  |
| 3. CITY, STATE, ZIP CODE<br>Arlington VA 22204-746                                                                                                                                                                                  |  |                                      |  |                        |  |
| 4. INTENDED USE<br>RESIDENTIAL                                                                                                                                                                                                      |  |                                      |  |                        |  |
| <b>SECTION C - PROPERTY INFORMATION</b>                                                                                                                                                                                             |  |                                      |  |                        |  |
| 1. LOCATION (STREET, ROUTE, HWY, ETC.)<br>LEE                                                                                                                                                                                       |  |                                      |  |                        |  |
| 2. CITY (IF APPLICABLE)<br>107th NW                                                                                                                                                                                                 |  |                                      |  |                        |  |
| 3. MAP & PARCEL NUMBER<br>691                                                                                                                                                                                                       |  |                                      |  |                        |  |
| 4. LAND LOT<br>107.78                                                                                                                                                                                                               |  |                                      |  |                        |  |
| 5. SUB LOT & BLOCK<br>1001                                                                                                                                                                                                          |  |                                      |  |                        |  |
| <b>SECTION D - RECORDING INFORMATION</b>                                                                                                                                                                                            |  |                                      |  |                        |  |
| 1. DATE<br>10-1-01                                                                                                                                                                                                                  |  |                                      |  |                        |  |
| 2. REEL BOOK<br>560 1001                                                                                                                                                                                                            |  |                                      |  |                        |  |
| 3. PAGE BOOK<br>PAGE                                                                                                                                                                                                                |  |                                      |  |                        |  |
| <b>SECTION E - TAX COMPUTATION</b>                                                                                                                                                                                                  |  |                                      |  |                        |  |
| 1. Actual value of consideration received by seller<br>PPI and before only when actual value is not known                                                                                                                           |  |                                      |  |                        |  |
| 2. Estimated fair market value of Real and Personal property conveyed                                                                                                                                                               |  |                                      |  |                        |  |
| 3. Fair market value of Personal property only conveyed                                                                                                                                                                             |  |                                      |  |                        |  |
| 4. Amount of Liens and Encumbrances not assumed by Buyer                                                                                                                                                                            |  |                                      |  |                        |  |
| 5. Net Taxable Value (1 or 2) minus 3                                                                                                                                                                                               |  |                                      |  |                        |  |
| 6. Tax DUE at 100 per \$1000 or fraction thereof (Minimum \$100)                                                                                                                                                                    |  |                                      |  |                        |  |
| 7. TAX DUE                                                                                                                                                                                                                          |  |                                      |  |                        |  |
| <b>SECTION F - CERTIFICATIONS</b>                                                                                                                                                                                                   |  |                                      |  |                        |  |
| SELLER: I hereby certify that all the facts of information entered on this transfer form P141 are true and correct to the best of my knowledge and belief.                                                                          |  |                                      |  |                        |  |
| Signature: <u>[Signature]</u> Date: <u>9/26/01</u>                                                                                                                                                                                  |  |                                      |  |                        |  |
| BUYER: I hereby certify that all the facts of information entered on this transfer form P141 are true and correct to the best of my knowledge and belief.                                                                           |  |                                      |  |                        |  |
| Signature: <u>[Signature]</u> Date: <u>9/26/01</u>                                                                                                                                                                                  |  |                                      |  |                        |  |
| CLERK OF COURT: I hereby certify that the recording information in Section D is correct and that the fee due in Section E is computed correctly based upon the information supplied in Section E by the seller or authorized agent. |  |                                      |  |                        |  |
| Signature: <u>[Signature]</u> Date: <u>10-1-01</u>                                                                                                                                                                                  |  |                                      |  |                        |  |

TAX ASSESSOR COPY

## EXHIBIT NO. 10

DAWSON • PARROTT • SASSER • BRONWOOD

## TERRELL COUNTY CHAMBER OF COMMERCE

LINDA BOWERS STITH  
Executive Director  
(912) 995-2011  
FAX 995-3971

P.O. Box 405  
127 W. Lee Street  
Dawson, Georgia 31742  
tccc@surfsouth.com

The Honorable Vernon Williams  
Surface Transportation Board  
1925 K. Street NW  
Suite 715  
Washington, DC 20423-001

Re: Docket No. AB-389 (Sub-No. 1X), Petition To Vacate a Notice of  
Interim Trail Use or Abandonment

Dear Secretary Williams,

Terrell County strongly supports the efforts of Georgia Southwestern Railroad, Inc. (GSWR) in the reactivation of rail service on the 13.62-miles of rail line located between Albany and Sasser, Georgia.

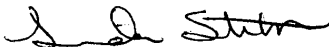
Our Terrell County Development Authority has long felt that this reactivation of rail services would be a step towards economic development in our County. We feel it would open doors of opportunity for industrial development that we presently do not have.

The reactivation of rail service between Albany and Sasser will improve GSWR's operation efficiencies and make it a more financially sound company. At the same time it would benefit the economy of each county it passes through.

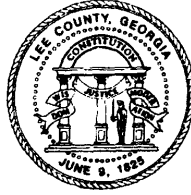
Terrell County has joined together with Baker, Lee and Dougherty counties in an effort to improve the economy of our region. We will be discussing the possibility of a joint industrial park as a future project, having rail access would be a positive step in that direction.

In conclusion, I believe that the proposed reactivation of rail service between Albany and Sasser will benefit both shippers and GSWR and, therefore I strongly urge the Surface Transportation Board to approve GSWR's petition.

Sincerely,



Linda Stith  
Executive Director



## *Lee County Development Authority*

**Fred Finney**  
Chairman  
**Neil Thompson**  
Vice Chairman  
*Tony Bretti*  
*Eddie Hinman*  
*Judy Pate*  
*John Wright*  
*Derryl Quinn*  
*Dr. Robert Moss*  
*Lewis Harris, ex-officio*

LEE COUNTY, GEORGIA  
P.O. Box 439  
Leesburg, Georgia 31763  
(229) 759-2422  
FAX: (229) 759-9224  
Web: [www.lee.ga.us](http://www.lee.ga.us)

**Brad Lofton**  
Director  
**Catherine Schulz**  
Assistant

February 3, 2003

The Honorable Vernon Williams  
Surface Transportation Board  
1925 K Street NW  
Suite 715  
Washington, DC 20423-001

Re: Docket No. AB-389 (Sub-No. 1X), Petition To Vacate a Notice of Interim Trail Use or Abandonment

Dear Secretary Williams:

I strongly support the effort by Georgia Southwestern Railroad, Inc. (GSR) to reactivate rail service on the 13.62-mile rail line located between Albany and Sasser, Georgia. The State of Georgia has an active program of assisting in the rehabilitation and maintenance of light-density rail lines to preserve and improve the transportation options available to our various industries. We consider rail service essential to the economic vitality of many of our communities. Southwest Georgia, in fact, is the 9<sup>th</sup> poorest Congressional District in the entire Country. We need progressive assistance with economic development. Inter-mogul transportation will be essential in allowing us to actively compete for industrial base.

The reactivation of rail service between Albany and Sasser will improve GSR's operating efficiencies and make it a more financially sound company. At the same time, rail customers located along this line will once again enjoy the option of rail service. GSR's effort should result in more competitive and efficient transportation services in our State.

I believe that the proposed reactivation of rail service between Albany and Sasser will benefit both shippers and GSR. Therefore, I strongly urge the Surface Transportation Board to approve GSR's petition.

Best regards,

**Brad Lofton**  
Executive Director



OFFICE OF LIEUTENANT GOVERNOR  
240 STATE CAPITOL  
ATLANTA, GEORGIA 30334

MARK TAYLOR  
LIEUTENANT GOVERNOR

January 30, 2003

The Honorable Vernon Williams  
Surface Transportation Board  
1925 K. Street NW  
Suite 715  
Washington, DC 20423-001

Re: Docket No AB-389 (Sub-No 1X) Petition to Vacate a Notice of  
Interim Trail Use or Abandonment

Dear Secretary Williams:

I write to let you know that I am among those who strongly support the effort of Georgia Southwestern Railroad, Inc. (GSWR) to reactivate rail service on the 13.62-mile line located between Albany and Sasser, GA.

Rail service is essential to the economic vitality of many of our communities, and the State has an aggressive program to assist in the rehabilitation and maintenance of light-density rail lines. Doing so will greatly increase the transportation options available to existing and prospective industry.

There is no doubt that reactivation of rail service between Albany and Sasser will benefit the state in several ways. It will improve GSWR's operating efficiencies and make it a more financially sound company. New options, obviously, will be made available to shippers along this line. It is a key link needed to make Georgia's transportation services more diverse, competitive and efficient.

I fully support the premise that the reactivation of rail service between Albany and Sasser is in the public interest, and I encourage your favorable action on GSWR's petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Taylor".

Mark Taylor

MT/sl



**Terry L. Coleman**  
SPEAKER

**House of Representatives**  
**Atlanta**

332 STATE CAPITOL  
ATLANTA, GEORGIA 30334-1160

January 29, 2003

The Honorable Vernon Williams  
Surface Transportation Board  
1925 K Street NW  
Suite 715  
Washington, DC 20423-001

Re: Docket No. AB-389 (Sub-No. 1X), Petition To Vacate a Notice of  
Interim Trail Use or Abandonment

Dear Secretary Williams:

I strongly support the effort by Georgia Southwestern Railroad, Inc. (GSRW) to reactivate rail service on the 13.62-mile rail line located between Albany and Sasser, Georgia.

The State of Georgia has an active program of assisting in the rehabilitation and maintenance of light-density rail lines to preserve and improve the transportation options available to our various industries. We consider rail service essential to the economic vitality of many of our communities.

The reactivation of rail service between Albany and Sasser will improve GSRW's operating efficiencies and make it a more financially sound company. At the same time, rail customers located along this line will once again enjoy the option of rail service. GSRW's effort should result in more competitive and efficient transportation services in our State.

In conclusion, I believe that the proposed reactivation of rail service between Albany and Sasser will benefit both shippers and GSRW and, therefore, strongly urge the Surface Transportation Board to approve GSRW's petition.

Sincerely,

Terry L. Coleman, Speaker  
Georgia General Assembly



## House of Representatives

GERALD GREENE  
REPRESENTATIVE, DISTRICT 158  
ROUTE 3, BOX 316  
CUTHBERT, GEORGIA 39840  
(229) 732-2101 (O)  
(229) 732-2750 (H)  
(404) 657-0499 (FAX)  
E-MAIL: GGreene@legis.state.ga.us

STATE CAPITOL, ROOM 401  
ATLANTA, GEORGIA 30334  
(404) 656-7856

### STANDING COMMITTEES:

INTERSTATE COOPERATION, CHAIRMAN  
AGRICULTURE & CONSUMER AFFAIRS  
APPROPRIATIONS, VICE-CHAIRMAN  
WAYS & MEANS, EX-OFFICIO

January 29, 2003

The Honorable Vernon Williams  
Surface Transportation Board  
1925 K Street, N.W.  
Suite 715  
Washington, D.C. 20423-01

***Re: Docket No. AB-389 (Sub-No. 1X), Petition to Vacate  
A Notice of Interim Trail Use or Abandonment***

---

Dear Secretary Williams:

I strongly support the effort by Georgia Southwestern Railroad, Inc. (GSWR) to reactivate rail service on the 13.62-mile rail line located between Albany and Sasser, Georgia.

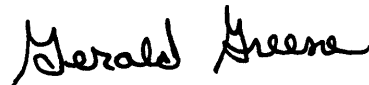
The State of Georgia has an active program of assisting in the rehabilitation and maintenance of light-density rail lines to preserve and improve the transportation options available to our various industries. We consider rail service essential to the economic vitality of many of our communities.

The reactivation of rail service between Albany and Sasser will improve GSWR's operating efficiencies and make it a more financially sound company. At the same time, rail customers located along this line will once again enjoy the option of rail service. GSWR's effort should result in more competitive and efficient transportation services in our State.

The Honorable Vernon Williams  
Surface Transportation Board  
***Re: Docket No. AB-389 (Sub-No. 1X), Petition to Vacate  
A Notice of Interim Trail Use or Abandonment***  
Page Two  
January 29, 2003

In conclusion, I believe that the proposed reactivation of rails service between Albany and Sasser will benefit both shippers and GSWR and, therefore, strongly urge the Surface Transportation Board to approve GSWR's petition.

Sincerely,

A handwritten signature in black ink that reads "Gerald Greene". The signature is written in a cursive, flowing style.

GERALD GREENE  
State Representative  
District 134

GG:gd



## House of Representatives

BOB HANNER  
REPRESENTATIVE, DISTRICT 159  
9610 PLAINS HIGHWAY  
PARROTT, GEORGIA 31777  
(229) 623-2841 (O)  
(229) 623-5875 (H)  
(229) 623-2841 (FAX)

STATE CAPITOL, ROOM 220  
ATLANTA, GEORGIA 30334  
(404) 656-5912

January 27, 2003

STANDING  
COMMITTEES:  
  
APPROPRIATIONS  
LEGISLATIVE & CONGRESSIONAL  
REAPPORTIONMENT  
NATURAL RESOURCES &  
ENVIRONMENT, CHAIRMAN

The Honorable Vernon Williams  
Surface Transportation Board  
1925 K Street, NW  
Suite 715  
Washington, DC 20423-001

RE: Docket No. AB-389 (Sub-No. 1X), Petition to Vacate a Notice of  
Interim Trail Use or Abandonment

Dear Secretary Williams:

I strongly support the effort by Georgia Southwestern Railroad, Inc. (GSRW) to reactivate rail service on the 13.62-mile rail line located between Albany and Sasser, Georgia.

The State of Georgia has an active program of assisting in the rehabilitation and maintenance of light-density rail lines to preserve and improve the transportation options available to our various industries. We consider rail service essential to the economic vitality of many of our communities.

The reactivation of rail service between Albany and Sasser will improve GSRW's operating efficiencies and make it a more financially sound company. At the same time, rail customers located along this line will once again enjoy the option of rail service. GSRW's effort should result in more competitive and efficient transportation services in our State.

In conclusion, I believe that the proposed reactivation of rail service between Albany and Sasser will benefit both shippers and GSRW and, therefore, strongly urge the Surface Transportation Board to approve GSRW's petition.

Sincerely,

Bob Hanner

BH/pg



## *House of Representatives*

January 30, 2003

The Honorable Vernon Williams  
Surface Transportation Board  
1925 K Street NW, Suite 715  
Washington, DC 20423-001

RE: Docket No. AB-389 (Sub-No. 1X), Petition To Vacate a Notice of Interim Trail Use or Abandonment

Dear Secretary Williams:

I strongly support the effort by Georgia Southwestern Railroad, Inc. (GSR) to reactivate rail service on the 13.62-mile rail line located between Albany and Sasser, Georgia..

The State of Georgia has an active program of assisting in the rehabilitation and maintenance of light-density rail lines to preserve and improve the transportation options available to our various industries. We consider rail service essential to the economic vitality of many of our communities.

The reactivation of rail service between Albany and Sasser will improve GSR's operating efficiencies and make it a more financially sound company. At the same time, rail customers located along this line will once again enjoy the option of rail service. GSR's effort should result in more competitive and efficient transportation services in our State.

In conclusion, I believe that the proposed reactivation of rail service between Albany and Sasser will benefit both shippers and GSR and, therefore, strongly urge the Surface Transportation Board to approve GSR's petition.

Sincerely

Wallace Sholar

State Representative, District 141-Post 1

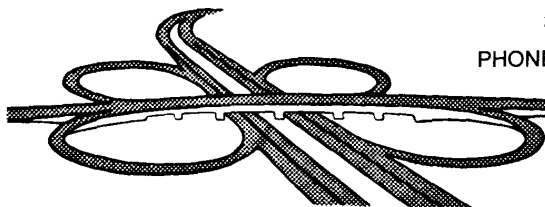
# OXFORD CONSTRUCTION COMPANY

3200 PALMYRA ROAD • ALBANY, GEORGIA 31707-1221

PHONE (229) 883-3232

Engineering FAX (229) 883-2962

Accounting FAX (229) 883-4262



January 31, 2003

The Honorable Vernon Williams  
Surface Transportation Board  
1925 K Street NW  
Suite 715  
Washington, DC 20423-001

RE: Docket No. AB-389 (Sub-No.1X), Petition to Vacate a  
Notice of Interim Trail Use or Abandonment

Dear Secretary Williams:

I strongly support the effort by Georgia Southwestern Railroad, Inc. (GSRW) to reactivate rail service on the 13.62-mile rail line located between Albany and Sasser, Georgia. The State of Georgia has an active program of assisting in the rehabilitation and maintenance of light-density rail lines to preserve and improve the transportation options available to our various industries. We consider rail service essential to the economic vitality of many of our communities.

The reactivation of rail service between Albany and Sasser will improve GSRW's operating efficiencies and make it a more financially sound company. At the same time, rail customers located along this line will once again enjoy the option of rail service. GSRW's effort should result in more competitive and efficient transportation services in our State. We are vitally interested in efficient rail transportation since we ship about 300,000 tons of aggregates per year by rail.

In conclusion, I believe that the proposed reactivation of rail service between Albany and Sasser will benefit both shippers and GSRW and, therefore, strongly urge the Surface Transportation Board to approve GSRW's petition.

Sincerely,

OXFORD CONSTRUCTION COMPANY

J. Bruce Melton  
President

JBM/cc

# EXHIBIT NO. 11

186559

1998

Original

Before the Surface Transportation Board

Georgia Great Southern Div. )  
South Carolina Central )  
Railroad Co., Inc. -- Exemption -- ) AB-389 (Sub-no. 17)  
Terrell, Lee and Dougherty Counties, )  
Georgia )



Reply by Rails to Trails Conservancy  
to Petition to Revoke Interim Trail Use

This is a Reply by Rails to Trails Conservancy to the petition to revoke interim trail use/railbanking filed by Carlton Co., et al., petitioners, by letter dated March 12, 1998. For the reasons stated below, the petition has absolutely no merit and must be denied. The 13.5 mile rail corridor at issue in this proceeding is an ideal candidate for railbanking (preservation for future rail reactivation) and interim use as a trail. It enjoys broad community support, and this Board acted properly and well within its jurisdiction and precedent in issuing the relevant Notice of Interim Trail Use (NITU) concerning which petitioners take misguided issue.

1. Carlton petition must be treated as a petition to reopen. Under this Board's rules, "petitions" such as that filed by Carlton Co., et al., amount to motions for reconsideration or to reopen, depending upon when filed. Under this Board's rules, motions for reconsideration must be filed within twenty days of the order from which further review is sought. See 49 C.F.R. § 1115.3 (20 days for reconsideration requests). The last germane order of this Board from which petitioners Carlton Co., et al., could have sought reconsideration was the Order served August 11, 1997, extending

remove tracks or crossties, or intend to abandon. See Todd Cecil Verified Statement ¶ 3-4. To the contrary, the railroad attests that it intended to railbank. Finally, as the railroad notes, both "ends" of the corridor "unquestionably qualify for railbanking and would be suitable candidates for same" even if there had been a severance. See id. ¶ 3.<sup>6</sup> Thus the issue of the sales is doubly irrelevant. Clearly the evidence presented does not demonstrate an abandonment consummation depriving this Board of jurisdiction. See Idaho Northern, supra, internet p.5.

3. Petitioner Carlton's grab bag of exhibits is irrelevant. Petitioners attach a number of exhibits to their two page motion to reopen, alleging a "flawed process." The process at the STB was not flawed; petitioners simply do not appreciate the result. There was extensive debate about the future of the corridor. Georgia Department of Transportation and allied interests argued extensively that the corridor should be kept intact. This Board has already noted that the State and its shippers argued, inter alia, that loss of the line in question here would "retard badly-needed economic development in the three Georgia Counties" involved. Indeed, Georgia Department of Transportation viewed the line as a "major industrial resource." STB decision served August 16 at pp. 4-5. Clearly it is appropriate to preserve for railbanking (future rail reactivation) a line with such distinctive rail

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<sup>6</sup> Both "ends" of the line in question connect to the interstate railroad system defined as lines still under STB regulation. Cecil Ver. Statement at ¶3.

transportation values, as already determined by the State of Georgia. That is all that RTC is doing, albeit in a more successful fashion than the State, the hyperbole and vitriol of petitioners' attorney aside.

So far as we can tell, petitioners never objected to any of the State's arguments, or any of the efforts of the State or shippers to keep the corridor intact. The petitioners had ample opportunity to participate in that proceeding; indeed, they had as much notice of it as did RTC. There was no "flaw." The only problem is that petitioners Carlton Co., et al., now want a substantive result of break-up of the corridor. Evidently the lead petitioner (Carlton Co., per its president Lee Walters) is motivated by a desire to incorporate the railroad corridor into a private hunting preserve.<sup>7</sup> Ironically, the break-up desired by the petitioners would not flow from any claim of right, such as a reversion or easement extinguishment. To the contrary, our title research to date indicates that petitioners are not owners of any underlying fee interest.<sup>8</sup> Instead, petitioners (clearly the Carlton Company) want to see the corridor broken up

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<sup>7</sup> See Letter, Walters to Burt, dated Jan. 6, 1988, and reply by Burt to Walters, dated Jan. 8, 1988, Exhibit C.

<sup>8</sup> See Letter, Spencer Lee to Charles Montange, April 1, 1998 (Mr. Lee, County Attorney for Dougherty County, has examined the relevant deeds in Lee County -- where petitioner Carlton Company, through its president, is interested -- and states that all convey a fee to the railroad with no reversion in adjacent landowners). The letter is set forth in Exhibit G. To the extent petitioners have no reversionary interest (and according to Mr. Lee there is no evidence that they do), they appear to lack standing.