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May 6, 2003



Mr. Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 713
Washington, D.C. 20036

207148

Re: 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, Dkt. No. AB-389 (Sub-No. 1X).

Dear Mr. Williams:

Enclosed please find the following pleadings:

- (1) an original and ten copies of a "Joint Motion of the Rails-to-Trails Conservancy ("RTC") and South Georgia Rails to Trails ("SGRT") for Substitution of New Railbanker/Interim Trail Manager," along with a Statement of Willingness filed on behalf of the SGRT. A check for the \$150 user fee is enclosed.
- (2) an original and ten copies of a "motion to strike."

As this matter is to be considered by the Board at its meeting on Friday May 9, 2003, we would appreciate it if these filings could be immediately distributed to the Board.

Please feel free to contact me at (202) 974-5142, if you have any questions or need any additional information concerning these filings.

Very truly yours,

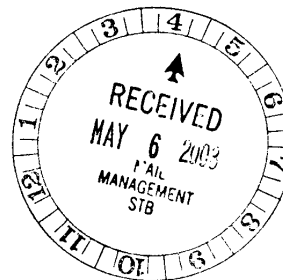
Andrea C. Ferster, General Counsel
Rails to Trails Conservancy

Enc.

Before the Surface Transportation Board

Georgia Great Southern Division --)
Abandonment and Discontinuance) AB 389 (Sub-no.1X)
Exemption -- between Albany and Dawson, GA)
_____)

Joint Motion of Rails-to-Trails Conservancy and
South Georgia Rails to Trails for
Substitution of New Railbanker/Interim Trail Manager



Introduction

Pursuant to 49 C.F.R. § 1152.29(f), the Rails-to-Trails Conservancy ("RTC") and South Georgia Rails to Trails ("SGRT") submit this joint motion to the Surface Transportation Board ("STB") requesting that SGRT be substituted as the interim trail manager for the rail line in the above-captioned proceeding.

RTC and SGRT have satisfied all the requirements set forth in the applicable regulation (49 C.F.R. § 1152.29(f) for substitution of SGRT as trail manager. The underlying railbanking contract between RTC and the railroad renders RTC's interests fully transferrable and does not require the consent of the railroad for transfer. Moreover, substitution of SGRT for RTC as trail manager will not have any adverse impact on any interest of Georgia Southwestern Railroad ("GSR" or "GSR") involved in this proceeding, and certainly will not adversely impact GSR's asserted rights to reactivate service on this line. Nonetheless, the current owner of GSR has declined to provide RTC with a letter of non-objection or consent to the substitution, which RTC customarily seeks in order to expedite the substitution process. Further, GSR has now indicated that it may object to the substitution. As we now discuss, GSR consent is not a prerequisite to the issuance of a substitute trail use order by this Board. Further, any such objection is contrary

to the underlying railbanking agreement, and violates the intent of the parties to that agreement.

FACTS

In 1996, Georgia Great Southern (GGS), a division of South Carolina Central Railroad, through its owner, RailTex (subsequently acquired by RailAmerica), moved for abandonment authorization of its 13.62 miles line between MP 86.5 at Albany and MP 72.88 at Sasser. RailTex subsequently consented to the issuance of a Notice of Interim Trail Use ("NITU") pursuant to section 8(d) of the Trails Act, 16 U.S.C. § 1247(d). A NITU was served August 16, 1996, which allowed the parties 180 days to negotiate an interim trail use/railbanking agreement.

With the consent of the railroad, by decision served October 25, 1996, the Rails to Trails Conservancy (RTC) was recognized as the new negotiating party to negotiate with GGS for the use of the Albany-to-Sasser portion of the line as a trail under the National Trails System Act, 16 U.S.C. § 1247(d), and the NITU was modified accordingly, and extended several times.¹ A railbanking agreement between RTC and GGS was reached on March 14, 1997.

At all times during the course of negotiations between RTC and GGS, the railroad was aware that, once RTC acquired the corridor, RTC intended to transfer ownership of the corridor either to one or more of the local governments along the line, or to a local non-profit corporation. Accordingly, the Railbanking Agreement contains no restriction or limitation on RTC's right to assign or sell the corridor, nor did the agreement contemplate any approval by GGS of any

¹ 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, Dkt. No. AB-389 (Sub-No. 1X), served Oct. 25, 1996, and extensions thereto, attached hereto as Exhibit 1.

assignment of rights by RTC.²

South Georgia Rails to Trails (SGRT) was formed in 1998 to promote the preservation of land, in particular railroad rights-of-way, for public use as parks and trails in South Georgia. consistent with its policy of local ownership of rail-trails, SGRT advised RTC of its willingness agreed to assume responsibility for the line under Section 8(d), and executed a statement of such willingness.³ RTC thereupon sought the railroad's acquiescence to the substitution of SGRT for RTC as railbanker because a written statement of non-objection to such a motion is typically supplied as a matter of industry practice.⁴ However, the railroad failed to respond to RTC's repeated requests that the railroad consent to the substitution of SGRT for RTC as trail manager. Eventually, counsel for RTC was contacted by RailAmerica, which advised RTC that the line had recently been sold to GSR.⁵ GSR has consistently failed to respond to RTC's repeated requests for consent to the substitution of SGRT for RTC. GSR has recently stated that "it is unlikely that GSWR would have consented to the substitution."⁶ The only reason given is that GSR plans to re-activate rail service on the line.

GSR's refusal to acquiesce to the substitution of SGRT for RTC as trail manager is

² See Exhibit B, ¶ 3 to SGRT's Reply to Petition to Vacate NITU ("SGRT Reply"), filed in this proceeding on April 4, 2003.

³ See Exhibit E to SGRT's Reply.

⁴ See Exhibit 1 to RTC's opposition to the Petition of Georgia Southwestern Railroad to Vacate NITU, filed in this proceeding on April 4, 2003.

⁵ See Exhibit 2, attached hereto. Thus, GSR's suggestion that RTC failed to seek GSR's consent to the substitution is false. See Petition of Georgia Southwestern Railroad to Vacate NITU, at 8 n. 5 (filed in this proceeding on March 5, 2003) ("GSR Petition").

⁶ See GSR Petition, at 8 n. 5.

arbitrary and unreasonable. The substitution would not impact GSR's ability to re-activate service on the line, since SGRT would simply step into RTC's shoes for purposes of the rights and responsibilities concerning rail service re-activation under the railbanking contract.⁷ SGRT can as readily discharge any obligations under the railbanking agreement as RTC.

Rather than waste resources on litigating GSR's arbitrary refusal to cooperate in the substitution of SGRT for RTC as trail manager, RTC and SGRT began discussing with GSR concerning the terms of its re-acquisition.⁸ In the meantime, RTC and SGRT entered in a sale/lease transaction which the parties understood fully to comport with Section 8(d) and this Board's requirements. More specifically, on September 26, 2001, RTC transferred title over the line to SGRT.⁹ SGRT is a not-for-profit corporation organized under the laws of Georgia for the purpose of promoting the preservation of land for use as parks and trails in south Georgia, and is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Under its agreement with RTC, SGRT's ownership of the corridor is "pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d)," and subject to the Trail Use Conditions imposed by the STB in STB Docket No AB-389 (Sub No. 1X). SGRT further agreed to assume full responsibility for management of, and liability and payment of taxes for, the right-of-way, as required by 49 C.F.R. § 1152.29.

⁷ As noted in the earlier pleadings filed in response to GSR's petition to vacate the NITU, neither the railbanking agreement with RTC nor the deed to RTC provided that GSR or any third party could re-enter the corridor for purposes of reactivation without paying reasonable compensation.

⁸ As noted in the parties' prior pleadings, these discussions were unilaterally aborted by GSR, which instead opted to file a petition to vacate the NITU. See Exhibit E to SGRT's Reply.

⁹ See Exhibit 3 to GSR Petition.

Because the railroad arbitrarily and contrary to the contract, withheld its acquiescence to the substitution, on September 25, 2001, SGRT and RTC entered into a lease, under which SGRT leased the corridor back to RTC in order to ensure that the corridor retained its railbanked status. The lease provides (§ 5) that "RTC will continue to serve as trail manager for the Property . . . [and] to continue in that capacity in an uninterrupted manner notwithstanding the transfer of the Property to SGRT."¹⁰ The lease further provides (§ 6) for a renewable term of six months, until such time as the STB approves the substitution of SGRT for RTC as a trail manager. The lease was amended and extended until September 25, 2003.¹¹ RTC's lease, as amended, provides a mechanism to ensure that the property is not only intact but available for *bona fide* rail reactivation, notwithstanding SGRT's ownership of the line.

DISCUSSION

I. The Substitution Motion Fully Complies With the STB's Regulations, 49 C.F.R. § 1152.29(f), Which Does Not Require Consent by the Abandoning Railroad.

In its motion to vacate, GSR claims that RTC acted unlawfully in engaging in a sale/lease transaction with SGRT. As noted in their response, RTC and SGRT take a contrary view. However, in order to moot this question, RTC wishes now, as it has wished all along, to terminate its status as interim trail manager of this corridor, and to substitute SGRT, the present owner of the property, for RTC as the interim trail use manager. A copy of SGRT's statement of willingness to assume full responsibility for management of, and liability and payment of taxes for, the right-of-way, is attached as Exhibit 3, accompanied by a check for \$150. RTC and SGRT

¹⁰ See Attachment to Exhibit E to SGRT's Reply.

¹¹ See Exhibit L to SGRT's Reply.

jointly request that STB: (1) reopen the proceeding in AB-389 (Sub-No. 1X); (2) vacate the existing order that recognizes RTC as the interim trail manager for the line; and (3) issue a replacement order stating that SGRT is now the railbanker/interim trail manager for the line. SGRT and RTC also request that the replacement order naming SGRT as the substitute interim trail manager be effective as of date the new order is issued, if possible, no later than June 2, 2003, at which time RTC's lease with SGRT will terminate.

While this motion does not have the "consent" of the railroad, such consent is not required by the plain language of the STB's regulations. Substitution of trail managers is government by the STB's regulations implementing Section 8(d), which provide that:

(1) When a trail user intends to terminate trail use and another person intends to become a trail user by assuming financial responsibility for the right-of-way then the existing and future trail users shall file, jointly:

(I) A copy of the extant CITU or NITU; and

(ii) A statement of Willingness to Assume Financial Responsibility by the new trail user.

(2) The parties shall indicate the date on which responsibility for the right-of-way is to transfer to the new trail user. The Board will reopen the abandonment or exemption proceeding, vacate the existing NITU or CITU; and issue an appropriate replacement NITU or CITU to the new trail user.

49 C.F.R. § 1152.29(f). Significantly, nothing in this regulation, which specifies each of the requirements and attachments for a motion to substitute trail managers, requires the consent of the railroad. By contrast, this Board's regulations governing the initial issuance of a NITU explicitly provide that "[i]f the carrier is willing to negotiate an agreement, and the public convenience and necessity permit abandonment, the Board will issue a CITU." See 49 C.F.R. § 1152.29(b)(1)(ii) (emphasis added); "[w]hen an interim trail use comment(s) or petition(s) is filed

in an exemption proceeding, the railroad's reply to the Board (*indicating whether and with whom it intends to negotiate an agreement*) is due within 10 days . . .” Id. § 1152.29(b)(2) (emphasis added).

It is a well established principle of statutory construction that when a legislature makes express mention of one thing, the exclusion of others is implied, because “there is an inference that all omissions should be understood as exclusions.” 2A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 47.23 (4TH Ed.). The same principle applies to legislative rules promulgated by administrative agencies. Here, this Board's regulations governing substitution of trail manager where a corridor has been successfully railbanked pursuant to a railbanking agreement during the negotiating period established by a valid NITU omit any requirement that the abandoning railroad consent to the substitution of one trail manager for another. 49 C.F.R. § 1152.29(f). By contrast, the regulations governing the initial issuance of a NITU establishing the railbanking negotiation period between the railroad and a willing trail manager explicitly require the consent of the railroad as a necessary predicate to the initial issuance of a NITU. Id. §§ 1152.29(b)(1)(ii), 1152.29(b)(2). Applying this well-established principle of construction, the appropriate interpretation is that this Board did not intend generally to require the abandoning railroad's consent to a substitution of one trail manager for another, particularly where the abandoning railroad has transferred to the interim trail manager its present interest in the underlying property.

The distinction drawn by the regulations between the initial issuance of a trail use condition, at which point the railroad's consent is required, and the transfer of the corridor from one trail manager to another after railbanking has been finalized, at which point the railroad's

consent is not required, is one that makes sense. At the abandonment stage, when the line is owned or operated by the abandoning railroad, the regulations require the railroad's consent to negotiate a railbanking agreement as a condition of the issuance of a NITU or CITU. By contrast, after the railroad has transferred all financial, managerial and legal responsibility and liability for the line pursuant to a valid railbanking/interim trail use agreement, the only right retained by the railroad are those contractual rights retained by the railroad in the railbanking agreement itself. Indeed, the substitution may occur long after the railbanking agreement has been finalized, at which point the abandoning railroad may no longer even exist as a legal entity. For that reason, the regulations only require the consent of the entity that currently has STB-approved management responsibility for the line. At the abandonment stage, that entity is the operator railroad, and after the corridor has been railbanked, that entity is the STB-approved interim trail manager.

Accordingly, there is no regulatory basis for conferring veto power on the railroad, particularly where it no longer has any current possessory interest in the corridor as land owner or operator of the rail line, to prevent qualified interim trail managers from reaching a voluntary agreement to transfer responsibility as interim trail manager/railbanker, so long as the requirements of the statute and regulations are met.

II. The Abandoning Carrier Is Entitled to Notice Of A Proposed Substitution of Trail Managers But Cannot Lawfully Veto An Otherwise Qualified Substitution.

As noted above, as a matter of practice, interim trail managers request (and typically receive) the acquiescence, non-objection, or consent of the abandoning railroad to a motion to substitute one trail manager for another. This practice merely reflects the fact that the views of

the abandoning railroad may be of relevance, in certain cases, to a substitution request, such as where the railbanking agreement limits the transferability of the corridor, or when the proposed new trail manager is not capable of satisfying the contractual responsibilities of an interim trail manager. For example, the railroad might be concerned that “the abandoning railroad be protected from liability if it retains its interest in the right-of-way.” Policy Statement of Rails to Trails Conversions, 2 I.C.C.2d 591, 608 (1986). Requiring notice of substitution requests to the abandoning railroad may also reflect the STB’s recognition that the abandoning railroad possesses a “residual common carrier obligation” with respect to the corridor, which thereby entitles the railroad to notice of substitution requests in the same manner as it is entitled to notice of re-activation requests by third party railroads. See Norfolk and Western Railway Company -- Abandonment between St. Mary's and Minister in Auglaize County, OH, 9 ICC2d 1015, 1017 (1993).

However, the fact that the abandoning railroad receives, as a matter of agency practice, notice and an opportunity to comment on a substitution request does not mean that the railroad may arbitrarily exercise a veto power over the substitution. Rather, this practice merely reflects the recognition that the railroad may have property or contractual rights that might be affected by the substitution, and therefore should be notified of such a request.

To the contrary, it would be inconsistent with the statute to grant the abandoning railroad veto power over motions to substitute one trail manager for another. This Board’s regulations consistently provide that railbanking is a voluntary agreement between the parties, whose rights and responsibilities are defined by the railbanking agreement itself. The voluntary railbanking agreement here did not give RTC “veto” power over RailAmerica’s assignment of its rights and

responsibilities under the contract to GSR, nor does it give GSR “veto” power over RTC’s assignment of its rights to SGRT. To the contrary, the agreement plainly recognizes that each party may freely assign its rights.¹² Allowing RTC and SGRT in these circumstances to substitute as trail managers, without interference by the railroad or any other objector, fully reflects the agency’s long-standing position that railbanking is governed by voluntary agreement. Policy Statement of Rails to Trails Conversions, 2 I.C.C.2d 591, 605 (1986) (noting that “interim trail use agreements must be voluntarily entered into by railroads,” and that therefore most “matters will be the subject of negotiations between the parties.”). Indeed, STB is legally obligated to approve a request for a substitute NITU where the substitute trail manager is qualified, the request comports with the regulatory requirements, and the request is consistent (as here) with the underlying contract, without regard to the opposition of the abandoning railroad, in light of the STB’s construction of Section 8(d) as imposing ministerial obligations on the agency. See Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990).

Further, allowing a railroad to arbitrarily withhold consent to the substitution of trail managers, would substantially undermine the effectiveness of Section 8(d). Due to the short time frames governing abandonment proceedings, particularly exempt abandonment proceedings, interim trail use agreements are frequently negotiated by land trusts or private organizations such as RTC, who are better able to take action within the regulatory time frames. Frequently, substantial compensation is paid to the railroad to purchase the railroad’s property interest in the line. RTC and other land trusts generally expect to transfer their rights to local or state government agencies, or local groups, as part of a funding package to preserve the line in the first

¹² See Exhibit B to SGRT’s Reply.

place. To allow a railroad arbitrarily to veto such a transfer where the railbanking contract gives the railroad no power of veto would render it impossible for organizations like RTC and other land trusts to put together rail corridor preservation packages, since their ability to freely transfer their rights to the corridor could be arbitrarily and unreasonably restrained by the abandoning railroad, in direct contravention of any binding contractual rights and obligations and the parties' expectations and reliance thereon.

Further, to allow a railroad to arbitrarily bar the transfer of a corridor in which it retains no ownership interest would interfere with settled expectations and binding contractual commitments, in contravention of the STB's articulated policy that railbanking is a voluntary arrangement, the details of which should be left to the parties. Moreover, allowing a private party to exercise such a veto power over a governmental function, which power can be exercised arbitrarily, or even in bad faith, would represent a delegation of government authority that is so clearly arbitrary that it amounts to a clear denial of rights safeguarded by the due process clause of the Fifth Amendment. Carter v. Carter Coal Co., and Helvering, 298 U.S. 238, 311 (1936); Eubank v. Richmond, 226 U.S. 137, 143 (1912).

III. The Railroad Has No Legitimate Basis For Objecting to the Substitution of SGRT for RTC as Interim Trail Manager.

In this case, the abandoning railroad and its successor-in-interest have no legitimate basis for objecting to the substitution of SGRT for RTC. As noted above, throughout negotiation of the railbanking agreement, the railroad was fully aware that RTC, a national, non-profit organization based in Washington, D.C., intended to transfer the corridor to a locally-based entity, such as a local government, park district, or nonprofit organization, who would serve as

the ultimate trail manager.¹³ The abandoning railroad retained no property interest in the corridor following its transfer, by quitclaim deed, to RTC. The railbanking agreement is fully and freely assignable by RTC, with no requirement that the railroad consent to any future assignment or transfer of the corridor.¹⁴

Nonetheless, RTC attempted to secure the consent of the railroad to the substitution of SGRT for RTC, simply as a formality and consistent with regulatory practice. RTC was therefore surprised when the railroad ignored RTC's repeated letters and telephone calls, as there is no contractual basis for the railroad to object to RTC's assignment of responsibilities under the railbanking agreement to SGRT. SGRT is a qualified trail manager. Indeed, SGRT's president paid the initial deposit of \$100,000 to secure the line in the first place.¹⁵ The substitution will not adversely impair the discharge of any responsibility of the interim trail manager embodied in the railbanking agreement, all of which SGRT has agreed to, and is able to, carry out just as well as RTC.

Nor will allowing SGRT to substitute as trail manager for RTC in any way undermine GSR's ability to re-activate rail service on the line or impact any of the costs associated with re-activation. To the contrary, if this request is denied, negotiations by GSR for the necessary rights to reactivate rail service on the line will be complicated, since GSR must now negotiate with two entities: RTC, which is the interim trail manager and owns the present right to use the corridor, and SGRT, which owns the underlying property. Without permitting substitution of SGRT for

¹³ See Exhibit B, ¶ 3 to SGRT's Reply.

¹⁴ See Exhibit C to SGRT's Reply.

¹⁵ See Exhibit E to SGRT's Reply.

RTC, the underlying agreements could be interpreted as permitting GSR to acquire no more than the STB-sanctioned trail manager's interest in the line, which at this point is only a leasehold interest, whereas if SGRT is substituted as trail manager, GSR has the option of negotiating a transfer of the underlying property itself. As a result, allowing the substitution of SGRT for RTC as interim trail manager is likely to facilitate the statute's goal of re-activating rail service on railbanked corridors.

CONCLUSION

RTC and SGRT jointly request that STB: (1) reopen the proceeding in AB-389 (Sub-No. 1X); (2) vacate the existing order that recognizes RTC as the interim trail manager for the line; and (3) issue a replacement order stating that SGRT is now the railbanker/interim trail manager for the line. SGRT and RTC also request that the replacement order naming SGRT as the substitute interim trail manager be effective as of date the new order is issued, at which time RTC's lease with SGRT will terminate and, if possible, by June 2, 2003.

Respectfully submitted,



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Attorney for South Georgia
Rails to Trails, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Joint Motion for Substitution of New Railbanker/Interim Trail Manager was mailed to the following persons with a copy thereof, on this 4 day of May, 2003.

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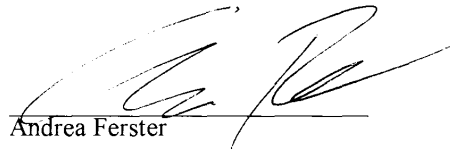

Andrea Ferster

EXHIBIT 1

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SERVICE DATE

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SURFACE TRANSPORTATION BOARD¹

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, 1996,² 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 5.38-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 terminated³ its involvement in negotiations with GGS for trail use. The railroad also states that it will negotiate with RTC for trail use.

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), 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 ICCTA 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 ICCTA. 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 affect prior to the ICCTA.

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

³ 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-way⁴ 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

⁴ See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha 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

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SERVICE DATE - FEBRUARY 28, 1997

SURFACE TRANSPORTATION BOARD¹

DECISION

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: February 26, 1997

On October 18, 1996, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for Rails to Trails Conservancy (RTC) to negotiate an interim trail use/rail banking agreement with the Georgia Great Southern Division, South Carolina Central Railroad Co., Inc. (GGS) for a portion of the line between milepost 86.5, at Albany, and milepost 72.88, at Sasser. The negotiation period expired on February 12, 1997.

By motion filed February 12, 1997, RTC requests that the negotiation period be extended an additional 180 days until August 11, 1997. RTC states that it has been actively negotiating with GGS and is close to reaching an interim trail use/rail banking agreement, but several issues relating to such an agreement have not yet been resolved. By letter filed February 19, 1997, GGS states that it does not object to the requested extension.

The requested extension of the negotiation period under the NITU will be granted.² It will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The purpose of the Trails Act is to preserve rail corridors for possible reactivation of rail service by permitting and encouraging their interim use as recreational trails. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990).

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

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), 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 ICCTA 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 ICCTA. 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 January 1, 1996.

² Where, as here, the carrier seeks a continuation of the negotiation period and has not abandoned the line at the end of the previously imposed negotiation period, regulatory jurisdiction is not terminated and the negotiation period may be extended. See Missouri Pac. R. Co.--Aband.--In OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990).

It is ordered:

1. The negotiating period under the NITU is extended to August 11, 1997.

2. The decision is effective on the service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

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SERVICE DATE - AUGUST 11, 1997

SURFACE TRANSPORTATION BOARD

DECISION

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: August 7, 1997

On October 18, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for Rails to Trails Conservancy (RTC) to negotiate an interim trail use/rail banking agreement with the Georgia Great Southern Division, South Carolina Central Railroad Co., Inc. (GGS), for a portion of the line between milepost 86.5, at Albany, and milepost 72.88, at Sasser. The initial 180-day negotiating period expired on February 12, 1997, but was extended through August 11, 1997, by decision served February 28, 1997.

On August 4, 1997, RTC, with the consent of GGS, filed a motion for an extension of the negotiation period until November 30, 1997. RTC states that it has been actively negotiating with GGS and is close to reaching an interim trail use/rail banking agreement, but has not yet solved several issues relating to such an agreement.

Because GGS consents to the request for extension of the negotiation period, an extension will be granted until November 30, 1997, as requested. This extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ The purpose of the Trails Act is to preserve rail corridors for possible reactivation of rail service by permitting and encouraging their interim use as recreational trails. See *Policy Statement on Rails to Trails Conversions*, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990).

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

It is ordered:

1. The negotiating period under the NITU is extended to November 30, 1997.
2. This decision is effective on the service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

¹ Where, as here, the carrier seeks a continuation of the negotiation period and has not abandoned the line at the end of the previously imposed negotiation period, the Board's regulatory jurisdiction is not terminated and the negotiation period may be extended. See *Missouri. Pac. R. Co.--Aband.--in OK*, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990).

EXHIBIT 2

CORNISH F. HITCHCOCK
ATTORNEY AT LAW
1100 - 17TH STREET, N.W., 10TH FLOOR
WASHINGTON, D.C. 20036-4601
(202) 974-5111 • FAX: 331-9680
EMAIL: CONH@TRANSACTION.ORG

FAX TRANSMISSION

2 January 2002

To: Gary Laakso, Esq.
Vice President and Regulatory Counsel
At: RailAmerica, Inc.
Fax: 561-994-4629

We are sending 4 pages, including this cover sheet. If there are any questions, call Con Hitchcock at the number shown above. Original will not follow by mail/UPS.

Dear Mr. Laakso:

I write to follow up on my letter to you dated 26 October 2001 and subsequent telephone call asking if my client, Rails-to-Trails Conservancy, could obtain a letter from the Railroad for filing with the STB in order to transfer RTC's trail manager status to a local group along a corridor between Albany and Sasser, GA.

When we spoke a month ago, you indicated that you would have an attorney in your office contact me, but to date I have heard nothing further.

I would be grateful for any steps you could take to facilitate a response. If there is further information I can provide to help you, please let me know.

I left a voicemail today with a similar message. I attach as well the earlier correspondence if it would be of assistance.

Sincerely,



Cornish F. Hitchcock

CORNISH F. HITCHCOCK
ATTORNEY AT LAW
1100 17TH STREET, N.W., 10TH FLOOR
WASHINGTON, D.C. 20036-4601
(202) 974-5111 • FAX: 331-9680
E-MAIL: CONH@TRANSACT.ORG

26 October 2001

Gary Laakso, Esq.
Vice President and Regulatory Counsel
RailAmerica, Inc.
5300 Broken Sound Blvd. NW
Boca Raton, Florida 33487

By UPS and facsimile: (561) 994-4629

Dear Mr. Laakso:

I'm writing to you on behalf of Rails-to-Trails Conservancy ("RTC") at the suggestion of Michael Blaszak, an attorney who represented Georgia Southwestern Railroad ("GSWR") in connection with the 1997 transfer of a corridor from GSWR to RTC for railbanking purposes. Let me outline the relevant background and then state my reason for writing to you.

The corridor in question is a 13.62 mile segment between Albany and Sasser, Georgia. At the time of the transfer from GSWR to RTC, Mr. Blaszak represented GSWR in connection with RTC's application to the Surface Transportation Board to become the trail manager for the property under the National Trail Systems Act. Specifically, Mr. Blaszak provided us with a letter dated 3 September 1996 in which he stated that GSWR did not object to RTC becoming trail manager in lieu of the original trail manager, the Chehaw Park Authority. For your convenience, I enclose a copy of Mr. Blaszak's letter, which accompanied RTC's statement of willingness to become the trail manager, which the STB approved.

RTC is interested in seeking STB approval to transfer its responsibility as trail manager to an Albany-based group, South Georgia Rails to Trails, Inc. ("SGRT"), which has been maintaining the corridor for RTC for the past several years and which RTC believes will do a superb job as trail manager. SGRT has provided us with the necessary "Statement of Willingness to Assume Financial Responsibility," which RTC is prepared to file in support of its application.

Earlier this month I contacted Mr. Blaszak to ask if RailAmerica, as GSWR's successor, would be willing to provide us with a letter similar to the one that he

signed in 1996. Mr. Blaszak advised that he was no longer representing the railroad and that I should contact you directly.

I am therefore requesting on RTC's behalf whether RailAmerica would be willing to provide a supporting letter of the sort that Mr. Blaszak provided previously so that we can include the letter with RTC's submission to the STB.

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions or if I can provide you with any further information.

Sincerely yours,

A handwritten signature in cursive script, reading "Cornish F. Hitchcock". The signature is written in dark ink and is positioned above the printed name.

Cornish F. Hitchcock

MICHAEL W. BLASZAK
Attorney
211 South Leitch Avenue
LaGrange, Illinois 60525-2162

Exhibit C

E-mail: mblaszak@interaccess.com

(708) 352-3052 phone
(708) 352-0929 fax

September 3, 1996

VIA OVERNIGHT SERVICE

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

*Re: Georgia Great Southern Division, South Carolina Central
R. Co., Inc.--Abandonment and Discontinuance Exemption
(Docket No. AB-389 (Sub-No. 1X))*

Dear Mr. Williams:

In its decision served August 16 in the captioned proceeding, the Board issued a Notice of Interim Trail Use to permit Chehaw Park Authority to negotiate with Georgia Great Southern toward acquisition of the Albany-Sasser segment of the subject rail line.

Georgia Great Southern has been informed that Chehaw Park Authority desires to withdraw from this proceeding, and that Rails to Trails Conservancy desires to be substituted as the interim trail user during the negotiation period.

This letter is to inform the Board that Georgia Great Southern does not object to the proposed substitution, provided that Rails to Trails Conservancy files the required Statement of Willingness to Assume Financial Responsibility.

Very truly yours,

Michael W. Blaszak

cc: Mr. Steven Emmett Mattox
Rails to Trails Conservancy
1400 16th Street, N.W.
Washington, D.C. 20036
(via facsimile)



Corporate Headquarters
5300 Broken Sound Blvd. NW,
Boca Raton, Florida 33487
Tel: 561/994-6015
Fax: 561/994-3929 • 561/994-4629
561/241-5397

Via Fax @ 202.331.9680 and Regular Mail

April 2, 2002

Cornish F. Hitchcock, Esq.
Attorney at Law
1100 - 17th Street, N.W.
10th Floor
Washington, D.C. 20036-4601

Dear Mr. Hitchcock:

I am in receipt of your letter dated October 26, 2001 regarding Rails-to-Trails Conservancy's ("RTC") request that RailAmerica, Inc. (the "Company") provide a letter to be submitted to the Surface Transportation Board allowing RTC to transfer its responsibility as trail manager to South Georgia Rails to Trails, Inc.

Please be advised that the Company recently completed several transactions to sell the stock of Georgia Southwestern Railroad, Inc. ("GSR") and, in another transaction, 102 miles of track and associated real estate to the State of Georgia.

You will need to contact Mr. Terry Small, President of Georgia Southwestern Railroad, Inc., at 216 Long Drive, P.O. Box 69, Smithville, Georgia 31787 with your request. His telephone number is 229.846.4021 ext. 11.

If you need anything further from me, please let me know.

Thank you.

A handwritten signature in dark ink, appearing to read 'Gary Laakso'.

Gary Laakso
Vice President - Regulatory Counsel

/kld

EXHIBIT 3



March 2003

South Georgia Rails to Trails, Inc.
P.O. Box 3170
Albany, GA. 31706

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St., NW, Rm 711
Washington, DC 20423

Re: 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, Dkt. No. AB-389 (Sub-No. 1X)

Dear Mr. Williams:

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 C.F.R. §1152.29, the South Georgia Rails to Trails Inc. is willing to assume 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 it 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 owned by Georgia Southern Railroad and operated by Georgia Southern Railroad.

The property, known as the Albany-Sasser Rail Trail, extends from railroad milepost 72.88 near to railroad milepost 86.5, a distance of 13.62 miles in Dougherty Lee and Terrell County, Georgia. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. AB-389 (Sub-no. 1X).¹ A map depicting the right-of-way is attached.

South Georgia Rails to Trails Inc. acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on Georgia Southern Railroad on the same date it is being served on the Surface Transportation Board.

Respectfully submitted,

Greg Mc Cormack
on behalf of: South Georgia Rails to Trails Inc.

¹ 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, Dkt. No. AB-389 (Sub-No. 1X), served Oct.
25, 1996

