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August 17, 2021
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National Association of Reversionary Property Owners (NARPO)
1100 Bellevue Way NE Ste.8A PMB 719
Bellevue WA. 98004
760-238-8420
dick156@earthlink.net

August 17, 2021

STB
Office of Proceedings
Washington, DC 20423

RE AB 1314-0X Elk River Railroad Inc. Abandonment Exemption in Kanawha and Clay
Counties, WV

Elk River Railroad Inc. (TERRI) seeks an exemption for an abandonment of its rail lines. On August 17, 2021, TERRI's attorney responded to the request of the STB concerning the connection to the national rail system of the Buffalo Creek & Gauley Railroad which was part of the Abandonment Exemption sought in AB 1314-0X. TERRI's attorney goes on for 13 pages explaining the same thing five different times, but never gets to the question if the TERRI is connected to the national rail system at Duck, West Virginia. Supposedly TERRI is connected to an A&O Railroad at or near Gilmer, West Virginia but there are many miles of right of way with no track and bridges missing between Duck and Gilmer. Also TERRI has admitted that no traffic has used these tracks since before 1999. A&O has not submitted a verified statement that A&O has supplied any traffic to TERRI.

Another area TERRI's attorney did not respond to were the allegations made by Ms. Loretta Cooper in her Comment Letter to the STB dated July 30, 2021. Ms. Cooper remarked that the portion of the proposed exempt abandonment from Clendenin to Hartland was abandoned by B&O Railroad in 1979. Under rules existing in 1979, the ICC allowed consummation of the abandonment in 1979 or 1980 when B&O removed every bridge, all rails and ties and all of the rail ballast. Most if not all of the land of the right of way reverted back to the abutting property owners according to West Virginia law in 1979.

In 1997 in FD 31989 the STB granted TERRI construction approval for construction of a rail line from Clendenin to Hartland. That rail line was never built and nothing ever moved over the proposed construction line, and TERRI never sought to acquire a fee or easement title from the hundreds of property owners along the proposed construction. None of the mitigations measures mandated by the STB in FD 31989 were ever done by TERRI. So now TERRI seems to think that because the STB granted them a construction approval, the line is now a common carrier line even though TERRI has never done anything in 24 years towards making the rail line into a common carrier qualified rail line. TERRI did sue CSX (B&O's surviving common carrier) in federal court on a condemnation action to acquire whatever interest CSX might have had in

the Clendenin to Hartland line. CSX eventually did sell to TERRI on a Quit Claim deed any interest, if any, CSX had in the line it inherited from B&O.

So here we are in 2021 and TERRI is trying to usurp the property rights of hundreds of property owners from Clendenin to Hartland by attempting to invoke the federal rails to trails act, 16 USC 1247(d) after an abandonment. The only problem is TERRI is not a common carrier on the rail line from Clendenin to Hartland so TERRI cannot get an abandonment certificate from the STB in order to invoke 16 USC 1247(d).

NARPO requests the STB to not approve an abandonment of the Clendenin to Hartland line and not allow railbanking if the STB approves the Petition for Exemption for Abandonment for the other rail line portions sought in AB 1314-0X.

All Parties of Record have been served via email on 8/17/2021.

Richard Welsh--NARPO
dick156@earthlink.net