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June 16, 2025

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ENTERED
Office of Proceedings
June 16, 2025
Part of
Public Record

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: AB 1321, *Ohi-Rail Corporation — Discontinuance —
In Perry and Muskingum Counties, Ohio*

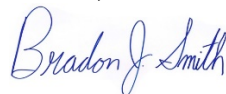
AB 167 (445-N), *Conrail Abandonment of Lines in
Zanesville, Ohio*

Dear Ms. Brown:

Enclosed are **Newark, Heath, & Buckeye Lake Scenic Railway's
Petition to Reopen and Vacate and a Motion for a Preliminary Injunction
(Expedited Relief Requested)** for the respective captioned matters.

Should any questions arise regarding this filing, please feel free to
contact me. Thank you for your assistance on this matter.

Yours,



Bradon J. Smith
Attorney for the Newark, Heath, & Buckeye
Lake Scenic Railway.

Enclosures (2)

CC: Ohio Rail Development Commission via counsel of record.

FILED
June 16, 2025
SURFACE TRANSPORTATION BOARD

FEE RECEIVED
June 16, 2025
SURFACE TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB 1321X

OHI-RAIL CORPORATION — DISCONTINUANCE EXEMPTION — IN PERRY AND
MUSKINGUM COUNTIES, OHIO

**Newark, Heath, & Buckeye Lake Scenic Railway
Petition to Reopen and to Vacate Discontinuance**

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(312) 252-1500

**Attorneys for the Petitioner
Newark, Heath & Buckeye Lake
Scenic Railway**

Dated: June 16, 2025

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB 1321

OHI-RAIL CORPORATION — DISCONTINUANCE EXEMPTION — IN PERRY AND
MUSKINGUM COUNTIES, OHIO

PREFACE AND SUMMARY

When the Board permitted the Ohi-Rail Corporation to discontinue service in this docket without conducting an environmental review, it violated both (1) its own environmental regulations and (2) the National Environmental Policy Act (“NEPA”) and the National Historic Preservation Act (“NHPA”) (collectively, the regulations and the acts, the “environmental laws.”). Without environmental review, a “major Federal action” (NEPA)¹ for a discontinuance “license” (NHPA)² permitted and continues to permit the alteration of the “human environment”³ by permitting track salvage. The discontinuance also unwittingly excused unlawful track removal that occurred some 7 years ago. Failing to undertake an environmental review in a discontinuance where the track will not continue to be operated is material error. To support any future environmental review, the matter should be reopened, the discontinuance vacated, and the track ordered restored.

¹ Pub. L. No. 91-90 § 102 (C) (codified at 42 U.S.C. § 4332 (C)).

² Pub. L. No. 89-665 § 106 (codified at 54 U.S.C. § 306108).

³ See e.g., *Louisville & Nashville R. — Trackage Rights — over Grand Trunk Western R.*, 360 ICC 115, 117 (1979) (providing that actions affecting the human environment require environmental inquiries).

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB 1321X

OHI-RAIL CORPORATION — DISCONTINUANCE EXEMPTION — IN PERRY AND
MUSKINGUM COUNTIES, OHIO

**Newark, Heath, & Buckeye Lake Scenic Railway
Petition to Reopen and to Vacate Discontinuance**

BACKGROUND

The subject rail line is known as the “Glass Rock Branch.” It lies between milepost 0.0 to milepost 3.1 (Glass Rock-East) and the former Z&W Industrial Track from milepost 45.8 to milepost 57.5 (Glass Rock-West), in Perry and Muskingum Counties, Ohio (the Line).

Petitioner⁴ Newark, Heath, & Buckeye Lake Scenic Railway doing business as the “Zanesville and Western Railroad Company” (“Z&W”) has a lease allowing it to operate tourist/excursion service on the Line. (Z&W Lease Agreement, Exhibit A, 2, Articles II and IV). The lease is from the State of Ohio through its Rail Development Commission (the “Commission,” with its predecessors and other public bodies “the State”), the Line’s owner. *Id.* Because of the 2018 track removal discussed below, Z&W’s heritage rail equipment is stranded on Glass Rock East. That makes Z&W a potential shipper on the Line. As far as other traffic goes, Z&W has been an advocate on behalf of traffic development on the Line and at various times has identified rail traffic opportunities.

⁴ Petitioner was not a party to the first discontinuance. The evidence it introduces here was therefore not introduced. 49 C.F.R. § 1115.3.

The Commission has owned the Line since it bought it from Conrail in 1982. *Ohio Rail Development Commission — Petition for Declaratory Order*, FD 36387 (STB served Dec. 22, 2020), 4. (“*ORDC*”). The purchase was under the aegis of the Northeast Rail Service Act. Pub. L. No. 97-35, Title XI (codified at 45 U.S.C. Chapter 20). *Id.* at 2. The State’s purchase under the Northeast Rail Service Act did not initially make it a common carrier on the Line. *Id.* at 6. Rather, the State admitted a succession of freight operators onto the Line, the most recent being the Ohi-Rail Corporation from 1987 to 2023. *Id.* at 2 (*citing Ohi-Rail Corp — Lease and Operation Exemption—Ohio Dep’t of Transp.*, FD 30986 (ICC served Feb. 27, 1987); and *Ohi-Rail Corporation — Discontinuance of Service Exemption—in Perry and Muskingum Counties, Ohio*, AB 1321X (STB served Feb. 1, 2023) (“*Ohi-Rail*”).

Z&W’s current lease iteration began in 2018. Exhibit A, 2. That same year, citing unsafe conditions, the State removed track from the grade-crossing at State Road 93—railroad milepost 0.83 on Glass Rock East—cutting Glass Rock East in two and stranding the Z&W’s heritage equipment east of the crossing the Line²⁰¹⁸ Commission Letter, Exhibit B at 1–2. The segment west of the State Route 93 crossing became stranded from the national rail network. Before discontinuance, the Commission has also taken out crossings (including removing rail or permitting paving over) on Glass Rock West at milepost 55.89 (Old Town Road at East Fultonham, Ohio); milepost 50.00 (Coopermill Road at Mt. Perry, Ohio); and milepost 48.18 (State Route 668). *See, e.g.*, 2025 Commission Letter, Exhibit C, at 1, “Current Condition of the Line.” The Commission has restricted Z&W’s operations to certain parts of the Line in the course of disputes over Z&W’s advocacy for freight traffic and the responsibility for the Line’s condition. Exhibit B at 2.

In 2020, the Commission asked the Board what it had to do to put the Line in “Trails Use” under the National Trails System Act (Pub. L. No. 90-543). *ORDC* at 1. For the Commission to invoke Trails Use, the Board determined Ohi-Rail must *first*

obtain discontinuance authority for the Line. *Id.* at 6. In authorizing that discontinuance, the Board concluded that it did not need to do an environmental review because the Line had already been approved for abandonment. *Ohi-Rail*, 3 at n.3 (“In addition, because the Line has already been authorized for abandonment, this discontinuance does not require an environmental review.”)

Ohi-Rail has since dissolved,⁵ but the Commission has told Z&W it has residual “common carrier responsibilities” on the Line.^{6,7} The Commission has also claimed that it acquired an unspecified freight interest on the Glass Rock Line from the Ohio Southern Railroad.⁸ The Commission has also said it will undertake track removal east of milepost 0.83, extending the salvage project it began in 2018—6 years before discontinuance was authorized. See Exhibit C at 3, last bullet point.

All to say track the railroad offered for more than 40 years is being removed from the “human environment” *with* STB permission but *without* any review under NEPA or NHPA. That is unlawful.

⁵ Ohio Secretary of State Articles of Dissolution of Ohi-Rail, Corp., Exhibit D.

⁶ Exhibit C at 1, “Rail Line History,” last bullet.

⁷ There is no party in this docket to oppose Z&W’s request for relief here. In the interest of fair notice, Z&W is serving Ohi-Rail’s attorney of record—who also represented the Commission—with this petition. Should someone wish to intervene, Z&W will address the issues (yet unknown) they present in a reply to this petition.

⁸ Exhibit C “Rail Line History” at 3d, 4th and 5th bullet points. This conflicts with *ORDC* and *Ohi-Rail* which did not consider that another carrier—or now the Commission—might need discontinuance authorization.

ARGUMENT

The Board should (1) reopen this matter due to a material error of law⁹ in determining the environmental laws had either been satisfied or did not apply; and (2) vacate the discontinuance until the requisite environmental inquiry is complete.

I. The Board did not Satisfy the Applicable Environmental Laws.

The National Environmental Policy Act as codified at 42 U.S.C. § 4321 *et seq.* requires any “major Federal actions” to consider *inter alia* “reasonably foreseeable environmental effects,” and unavoidable “reasonably foreseeable adverse environmental effects.” 42 U.S.C. § 4322(C)(ii). NEPA is a process statute; when a major Federal action is contemplated the Board must “first . . . determine whether [the proposed project] would have a significant environmental impact.” *Padgett v. Surface Transp. Board*, 804 F.3d 103, 109 (1st Cir. 2015) (internal citation omitted). Likewise for NHPA; “prior to the issuance of any license” federal agencies must take into account the effect of the undertaking on any historic property. 54 U.S.C. § 306108.

The Board’s licensing proceedings under 49 U.S.C. Chapter 109—e.g., rail construction or its converse, abandonment (including discontinuances) and salvage—require review under NEPA (as major Federal actions) and the NHPA (as federal licensing undertakings). See, e.g., *Goos v. ICC*, 911 F.2d 1283, 1286 and 1294 (8th Cir. 1990). And so the Board has adopted regulations to support its implementation of these statutes and other environmental acts Congress has passed. 49 C.F.R. § 1105.1. The Board did not satisfy either its regulations, and by extension, any relevant environmental statutes.

⁹ 49 C.F.R. § 1115.4

A. The Board's Environmental Regulations Require an Environmental Review.

For discontinuances, an environmental review will be required, unless it is a one “where the affected line will continue to be operated.” 49 C.F.R. § 1105.6(c)(5). This exception to the default environmental review where “the affected line will continue to be operated” is a “categorical exclusion” under NEPA. *Paducah & Louisville Railway, Inc. — Acquisition — CSX Transportation, Inc.*, FD 34738 (STB served Aug. 29, 2005), 10 at n. 9 (identifying 49 C.F.R. § 1105.6(c) as having the Board's categorical exclusions from NEPA). But this circumstance does not meet the categorical exclusion criteria; this lease discontinuance not one where the “affected line will continue to be operated.”

The categorical exclusion is premised on the ICC's conclusion that there is no cognizable environmental effect where (1) where the track is not being removed and (2) rail traffic is continuing. The ICC first said this in its rulemaking on § 1105.6. *Implementation of Environmental Laws*, EP 55 (Sub-No. 22A) (I.C.C. served March 20, 1990), 1990 WL 287598, at *3 (“Our experience indicates that the mere discontinuance of freight service, without abandonment, generally has minimal environmental effects. The track and associated structures generally will not be removed”). Thus, for the categorical exclusion to apply, there must be no threat of track removal.

Relatedly, there is a consistent line of cases shows that it is imperative operations continue for the categorical exclusion to apply. *Union Pacific Railroad Company — Discontinuance Exemption — in Oklahoma City, Okla.*, AB 33 (239X) (STB served Apr. 13, 2006) (The proposed discontinuance of UP's service is categorically excluded from environmental reporting requirements . . . because the discontinuance [w]ould not result in salvage of rail materials on the line.”); *North Coast Railroad Authority — Adverse Discontinuance of Lease and Operating*

Authority — Northwest Pacific Railway Company in Humboldt, Trinity, and Mendocino Counties; Cal., AB 1313 (STB served Mar. 4, 2022), 7 (relying on no-salvage commitment in granting waiver of environmental and historic inquiry); *State of South Dakota — Adverse Discontinuance of Operating Authority — Napa Platte Regional Railroad Authority*, AB 1253 (STB served May 30, 2017), 3 (waiving Board’s environmental requirements where state said it would not salvage track).

Conversely, where a line with a single carrier is authorized for discontinuance, the Board has expressly forbid salvage until a suitable environmental inquiry has been undertaken. *BNSF Railway — Discontinuance — in Iron and Crawford Counties, Mo.*, AB 6 (Sub-No. 476) (STB served Aug. 17, 2011), 6.

That’s what will happen here. The Line will not continue to be operated with freight traffic, and the track will be (or already has been) salvaged. That means the Board’s rationale for categorically excluding discontinuances of trackage rights from NEPA and the NHPA—that there will be no change to track or traffic—does not apply. Without a categorical exclusion, the Board should have made the threshold environmental inquiry the environmental laws require.

Consider further that environmental review has been required on publicly-owned lines where discontinuance would leave a line without any regulated freight service—even without salvage—as in *Southern Pacific Transportation Company — Abandonment Exemption — Los Angeles County, California*, 8 I.C.C. 2d 495, 518 (1992) (clarified on other grounds at 9 I.C.C. 2d 385 (1993)). In that matter, the Interstate Commerce Commission gave after-the-fact acquisition authority in 1991 to Los Angeles County for its 1990 purchase of a rail line. *Id.* at 508–511. Then, the ICC exempted Los Angeles County from 49 U.S.C. Subtitle IV—including its abandonment requirements. *Id.* at 512–513. That left only the Southern Pacific’s residual freight operating rights standing between the line and a cessation of

freight rail service. At the same time, Southern Pacific had sought to discontinue that authority as part of the series of proceedings. *Id.* at 516. In that posture—an unregulated owner with a freight tenant—the ICC undertook an environmental review to permit the discontinuance and ultimately imposed a NHPA condition. *Id.*

The same administrative jurisprudence merits the same outcome here. The tenant-non-owner common carrier has asked to discontinue freight rail service it offered for nearly 40 years. The Board determined not to regulate the owner. See *ORDC*. Agency precedent requires an environmental review in this case of a non-common carrier owner with a regulated tenant.

B. No Legal Rationale Supports Foregoing Environmental Review

The Board did not explain why it thought it could forgo environmental review, but there are two potential reasons. First, the Board might have thought that an environmental review either had been conducted insofar as the Line was “authorized for abandonment.” *Ohi-Rail*, 3 at note 4. Second, the Board might have thought that the discontinuance fell under the Northeast Rail Service Act, which exempted certified modified rail certificates and abandonments from environmental review. Neither rationale is legally sound.

1. Prior Abandonment Authorization did not Include an Environmental Review.

If the Board thought an environmental review had been undertaken it erred; no environmental review was or would be conducted for the abandonment of NERSA-lines. 49 C.F.R. § 1105.6(b). Indeed, the ICC determined Congress said it could not undertake an environmental review in a NERSA-supervised abandonment. *Conrail Abandonments under NERSA*, 365 ICC 472, 475 (1981) (“*NERSA Abandonments*”). So the Board would have been wrong to think that any

environmental requirement had been met before the discontinuance in this docket as there is no environmental review “under NERSA.” *NERSA Abandonments* at 475.

2. *The Discontinuance was not “under NERSA.”*

Nor is the discontinuance “under NERSA.” That is first apparent in the text of the statute: NERSA’s text is incongruent with the discontinuance the Board authorized here. NERSA speaks specifically to an action by (1) the Consolidated Rail “Corporation” (Conrail) for (2) a line in the Conrail Final System Plan. 45 U.S.C. § 748 (a)–(b). Discontinuance by Ohi-Rail is none of those things.

Beyond that there is a statutory conflict: 49 U.S.C. § 10903 cannot coexist with NERSA. 45 U.S.C. § 748(a) (providing that an abandonment under NERSA is exempt from the codified abandonment statutes at 49 U.S.C. Chapter 109). With that text in mind, the Board determined this was a Chapter 109 discontinuance and not a NERSA action it required Ohi-Rail to receive discontinuance authority before the NERSA-abandonment might be effectual. If NERSA covered the discontinuance, there would be no need for a § 10903 undertaking like Ohi-Rail made here. The Board saw the symmetry: recognizing that Ohi-Rail acquired the Line in a Chapter 109 proceeding, the Board required a Chapter 109 proceeding—*not an extraordinary, summary, NERSA-founded “ministerial” stamp*—for Ohi-Rail to obtain its discontinuance. *Ohi-Rail* at 4 (premising trails use eligibility on the condition that Ohi-Rail “request[] and receive[]” discontinuance authorization”).

Recognition that a fully-regulated entry requires a regulated, non-ministerial discontinuance adheres to prior Board practice and is consistent with the law in way that the Board’s approach in *Delaware & Hudson Railway Company Inc. — Discontinuance of Trackage Rights Exemption — in Broom County N.Y. et al*, AB 156 (Sub-No. 27X) (STB served Aug. 13, 2015) (“*D&H*”) is not. There the Board

reasoned that because a pre-abandonment discontinuance by Conrail under NERSA might not have received environmental review, neither should a post-abandonment authorization discontinuance require environmental review. *Id.* at 3.

But that conclusion was gratuitous dicta because the underlying class exemption filing suggested that the categorical exclusion was available; the lines would all continue to be operated. March 19, 2017 D&H Notice of Exemption Filing in *D&H*, 1 (providing all lines were “owned and/or operated” by other carriers).

Supposing it were comparable, the Board’s reading of NERSA and its prior legal authorities in *D&H* was overbroad. Despite citing the “plain language” of NERSA¹⁰ nowhere did the Board’s analysis address that the reinstitution of fully-certificated service by a third party is a fact pattern entirely different from what NERSA purports to cover (abandonments, by Conrail, for lines in the Final System plan). No part of the statutory text suggests Congress either wanted (1) NERSA to create carte blanche environmental exemptions for third parties 40-odd years later or (2) to cover anything other than actions by Conrail for lines it owned. And *D&H*’s attempt to disregard the real life sequence of events ignores basic “before and after” considerations; a discontinuance in the years “before” 1981 may well present environmental circumstances different than one going on 50-years “after” 1981.

Even if the lack of “plain language” and the basic before-and-after considerations are ignored, the Board’s authority in *D&H* does not cover either situation (*D&H* or the present one). The Board’s extra-textual authority—*NERSA Abandonments*—is exactly one sentence long and is a rule-making rooted solely in *abandonments by Conrail*. *NERSA Abandonments*, 365 ICC at 475 (“We lack the authority under NERSA to take either suggested course of action [modifying application requirements on net liquidation value disclosure]. *For this reason, we*

¹⁰ *Id.* at 3.

must also reject the argument that we must analyze the environmental and community impact of each abandonment application.”) (emphasis supplied to identify the single sentence *D&H* relies on). *But see id.* at 472 (“*NERSA altered the way we process abandonment applications filed by the Consolidated Rail Corporation (Conrail) . . .*”) (emphasis supplied); (“We instituted this proceeding to clarify *how Conrail abandonment applications* will be handled under NERSA.”) (emphasis supplied). Again, the rulemaking of *NERSA Abandonments* applies to abandonments “under NERSA”—meaning it does not apply to the discontinuances of tenants authorized under Chapter 109. *NERSA Abandonments* at 475. Applying the logic of *NERSA Abandonments* to discontinuances of fully certificated operations has no foundation.

All said, *D&H* summarily concluded that NERSA’s implied environmental review exemption applied in futurity to persons other than Conrail. But no text in NERSA or the Board’s rulemaking on NERSA abandonments supports that conclusion; not one word of NERSA itself nor *NERSA Abandonments* indicates it applies to anyone other than Conrail for actions other than abandonments of Conrail’s interest. The Board wisely forewent reliance on *D&H* in its discontinuance authorization here. To return to it on reopening would be material error.

II. Without the Required Environmental Inquiry, an Ongoing Harm of Unlawful Track Removal will Occur.

The environmental inquiry—particularly the historical inquiry under the NHPA—required here is not an academic exercise. Whatever the precise authorization requested, “salvage . . . may affect the human environment.” *CSX Transportation, Inc. — Abandonment — Williamson County, Tenn.*, AB 55 (Sub-No. 226X) (ICC served Mar. 3, 1988) [1988 WL 484827 at * 1]. And so it has been the Board’s rule that no salvage is permitted before a decision to maintain the status

quo. Ex Parte 678, *Consummation of Rail Line Abandonments that are Subject to Historical Preservation and Other Environmental Conditions*, Apr. 23, 2008, at 3–4. Otherwise, the “Board’s ability to carry out its obligations under NEPA and NHPA may then be adversely affected.” *Id.* at 4. Recognizing these obligations, the Board has determined that track removal before the environmental inquiry is completed is unlawful. *Id.*

The legal distinction between “abandonment” and “discontinuance” is not relevant here; the functional inquiry is whether salvage could be undertaken. Where discontinuance might result in salvage, the Board has stayed it—salvage—until the environmental review process is completed. *Colorado Wheat Admin. Comm. et al. v. V&S Railway, LLC*, NOR 42140 (STB served May 7, 2015), 7–8. Similarly and alternatively, the Board has prohibited salvage in discontinuances where there will be no other operator and there has been no environmental inquiry. *BNSF Railway — Discontinuance — in Iron and Crawford Counties, Mo.*, AB 6 (Sub-No. 476) (STB served Aug. 17, 2011), 6.

Here the Commission has undertaken salvage activities when it took out road crossings even before receiving any discontinuance authority—as early as 2018. It shows every indication of continuing its salvage. Exhibit E. Doing so before the legally-required environmental inquiry is complete is unlawful and must be addressed either via (1) Z&W’s accompanying motion for a preliminary injunction; or (2) in an immediate reopening and vacating.

III. The Board must Vacate the Discontinuance

Vacating the discontinuance is necessary because environmental laws are unequivocal: they must be observed before the Board authorizes any discontinuance. *Padgett v. Surface Transp. Board*, 804 F.3d at 109. 54 U.S.C. § 306108 (NHPA section establishing the same prerequisite step to identify impact

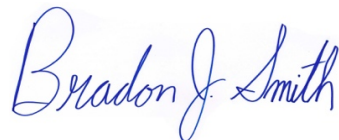
on historical sites). To remain faithful to Congress's mandates the Board must vacate the discontinuance. No other approach allows the Board to undertake this review and impose any necessary conditions.

CONCLUSION

The law requires the Board to conduct an environmental review for this discontinuance before the Board can grant any discontinuance authority. Removal of track prejudices that review. Accordingly, to meet the requirements of the environmental laws and remedy the prejudice track removal has caused, the Board should reopen this proceeding, vacate the discontinuance, resolve whether the Commission is a common carrier because of its holding out or interest received from the Ohio Southern (see n. 8 above), and require the track to be replaced. An interested party could then pursue a discontinuance.

Dated: June 16, 2025

Submitted,



Fletcher & Sippel LLC
Bradon J. Smith
Thomas J. Litwiler
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**Attorneys for the Newark, Heath, &
Buckeye Lake Scenic Railway**

in effect until 2031

AB 1321
Z&W PETITION

- Requires* 1. *PASSENGER EXCURSION ONLY.*
2. *FULL FRA Reg. COMPLIANCE.*
3. *PLUS, INSURANCE.*

LEASE AGREEMENT

BETWEEN

THE STATE OF OHIO, OHIO RAIL DEVELOPMENT COMMISSION

AND

NEWARK, HEATH AND BUCKEYE LAKE SCENIC RAILWAY

FEBRUARY 2018

ORDC GLASS ROCK BRANCH

OHIO RAIL DEVELOPMENT COMMISSION LEASE CONTROL NO. 2018-

This is a lease of real property (the "Lease") between the State of Ohio, Ohio Rail Development Commission, 1980 West Broad Street, Mail Stop 3140, Columbus, Ohio 43223 (hereinafter referred to as "ORDC"), and Newark, Heath and Buckeye Lake Scenic Railway, doing business as the Zanesville and Western Scenic Railroad, having a statutory agent at 439 Oakland Park, Columbus, Ohio 43214 (hereinafter referred to as "Lessee").

WHEREAS, pursuant to the provisions of Sections 4981.06(A) and 4981.08(A), the ORDC may lease rail property

WHEREAS, Lessee applied to ORDC for a lease on the hereinafter described real property for the storage of various railroad equipment, the clearing of brush from the line, the inspection of the line, repair of the line, and other miscellaneous uses of the line which is described as follows; and

WHEREAS, Lessee's ultimate goal is the operation of a tourist and excursion train in Perry County, for the education and economic benefit of the surrounding area;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants, and agreements herein contained, the parties hereto agree as follows:

ARTICLE I. PROPERTY DESCRIPTION

A portion of the Fultonham Running Track between MP 0.0 at its connection point to the Ohio Southern Railroad S. Zanesville to New Lexington mainline, and MP 3.1 at the east side of the site of the former Columbia Cement Plant, now owned by the Maysville Regional Water District, as well as the track from the west side of the Maysville Water District property at MP 57.47 to MP 48, just east of the right-of-way crossing at SR 668 (the "Leased Premises").

ARTICLE II. TERM

This lease shall be for a period commencing January 1, 2018, and expiring on December 31, 2023, unless otherwise terminated in accordance with the termination provisions herein.

ARTICLE III. RENT

Lessee shall pay ORDC \$500 on January 2 of each year during the term of this Lease. Rent for the initial year will be due upon signature of this Lease.

ARTICLE IV. USE

Lessee may use and occupy the Leased Premises for the following purposes:

1. Excursion service, with the previous written consent of the Executive Director of ORDC;
2. Regular maintenance and inspection activities, including any required FRA inspections and maintenance required to maintain appropriate standards of track and equipment;
3. Storage and movement of equipment needed to perform items 1 and 2 of this list; and
4. Any additional activities previously approved in writing by the Executive Director of ORDC.

ARTICLE XXIII. AMENDMENT

No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

ARTICLE XXIV. WAIVER

No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Lease shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

ARTICLE XXV. SURVIVAL

The representations, warranties, covenants, indemnities and agreements of the parties contained in this Lease shall survive the expiration or termination of the term of this Lease and shall be and continue in effect notwithstanding the fact that Lessee may waive compliance with any of the other provisions of this Lease.

ARTICLE XXVI. HEADINGS

The headings to the various provisions to this Lease have been inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the express terms, provisions and conditions of this Lease.

ARTICLE XXVII. MULTIPLE COUNTERPARTS

This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the day and year first above written.

LESSEE:

NEWARK, HEATH AND BUCKEYE LAKE SCENIC RAILWAY

BY: William E. Rate

PRINT NAME: William E. Rate

TITLE: President

DATE: 3/28/18

LESSOR:

STATE OF OHIO
OHIO RAIL DEVELOPMENT COMMISSION

Matthew R. Dietrich
Matthew R. Dietrich,
Executive Director

Date: 4-6-18

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (the "First Amendment") 11-201801 is made and entered by and between the State of Ohio, Ohio Rail Development Commission, hereinafter referred to as "ORDC," and Newark, Heath and Buckeye Lake Scenic Railway, doing business as the Zanesville and Western Scenic Railroad ("Lessee").

BACKGROUND INFORMATION

- A. ORDC and the Lessee entered into the Lease, dated January 1, 2018 (the "Agreement").
- B. The ORDC and the Lessee desire to modify the term of the Agreement as provided herein.

STATEMENT OF THE AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, ORDC and the Lessee agree as follows:

- 1. **Article II. TERM** is hereby deleted in its entirety and replaced with the following:

This Lease shall be from a period commencing on January 1, 2018, and expiring on December 31, 2031, unless otherwise terminated in accordance with the termination provisions herein.
- 2. Except as modified herein, all terms, covenants and conditions contained in the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this First Amendment to the Agreement as of the last date set forth below.

Newark, Heath & Buckeye Lake Scenic Railway
dba Zanesville & Western Scenic Railway

By: William E. Ratz
William Ratz

Title: President

Date: May 14, 2020

State of Ohio
Ohio Rail Development Commission

By: Matthew R. Dietrich
Matthew R. Dietrich

Executive Director

Date: May 26, 2020

*Lease
in effect
until
12/31/2031*



OHIO RAIL DEVELOPMENT COMMISSION

Mail Stop #3140, 1980 West Broad Street, Columbus OH 43223
John R. Kasich, Governor • Mark Policinski, ORDC Chair

EXHIBIT B

AB 1321

Z&W Petition

July 30, 2018

Mr. William Ratz, President
Zanesville & Western Scenic Railroad
439 Oakland Park
Columbus, Ohio 43214

Dear Mr. Ratz,

The Ohio Rail Development Commission ("ORDC") is in receipt of the Zanesville and Western ("Z&W")'s letter sent to Jason Sturgeon, District Deputy Director of the Ohio Department of Transportation ("ODOT")'s District 5, with regards to the State Route 93 ("SR93") crossing on the Glass Rock Branch that the Z&W leases from ORDC. ORDC is troubled by this development.

Safety is ORDC's most important priority. The SR93 crossing, in its current state, is not safe. The Z&W, however, has resisted any efforts to improve the safety at the SR93 crossing, first opposing an exemption for the crossing requested by the local school district in April 2017¹ and then resisting this year's effort to repave the road. ORDC will not allow an unsafe condition to exist at the SR93 crossing when it is so easily remedied, and it is unfortunate that the Z&W does not share this commitment to safety.

Tom Burns of my staff assured me that Z&W (via Tom Barnett) understood the situation, and that ODOT would be pulling the crossing surface temporarily and that at a future time, the surface would be installed at a 50-50 cost share between ORDC and the Z&W. This future time would be after three steps were accomplished:

- Z&W and ORDC enter into a freight lease covering the Glass Rock Branch;
- Z&W petitions and receives freight rights from the Surface Transportation Board; and
- A customer who would utilize the rail is identified, necessitating rail service across the SR93 crossing.

*Z&W Scenic
is NOT A
COMMON
CARRIER.*

To date, none of these items have happened. As such, ORDC refuses Z&W's request to leave the SR93 crossing in service and/or reinstall the crossing. This letter is also to serve formal notice upon Z&W that ORDC rescinds its offer of reinstalling the crossing at a 50-50 cost share.

Going forward, Z&W shall cease and desist from holding itself out as having any rights to serve freight in any way, shape or form, along the Glass Rock Branch. It is misleading at best to hold oneself out as providing a common carrier service without being able to legally provide such service, and ORDC considers any further action by Z&W in relation to soliciting freight service and/or requesting the repair or restoration of the SR93 surface a condition of immediate default on the Z&W's agreement with ORDC signed in April of this year.

Z&W will also, from this point forward, refrain from undertaking any operations or work outside of the current 1.6-mile operating track, between Coopermill Road and the bridge to the east over Turkey Run. No operations, track rehabilitation work, or other activities may be performed west of Coopermill Road or east of the bridge over Turkey Run unless requested by Z&W in writing and with the written approval of

¹ PUCO Case Number 17-0915-RR-RCP

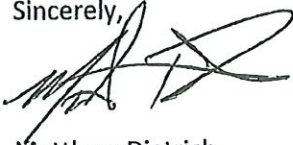


EXHIBIT B
AB 1321
Z&W Petition

myself. Please prepare to remove any Z&W equipment located on the Glass Rock Branch west of Coopermill Road or east of the bridge over Turkey Run in accordance with Article VIII of our agreement. At the end of the 60-day period any remaining equipment will be removed and the Z&W billed for any expenses incurred by the ORDC. The only operations allowable without express written approval are the continued operation of the scenic train on the 1.6 miles of track, provided the track meets all safety requirements on a weekly basis.

ORDC has spent an extraordinary amount of time, effort and state resources on the Z&W and the Glass Rock Branch to provide the Z&W every opportunity to succeed. We hope that reducing the scope of the lease and providing a more focused task on which to concentrate will help the Z&W get back on track.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Dietrich', written over a horizontal line.

Matthew Dietrich
Executive Director



**Rail Development
Commission**

Rail.Ohio.gov

Mike DeWine, Governor Scott Corbitt, Chair

February 14, 2025

Bill Ratz
Zanesville and Western Scenic Railroad
5700 S.R. 204, N.E.
Mount Perry, Ohio 43760

Dear Mr. Ratz:

Please accept this letter as the Ohio Rail Development Commission's (Rail Commission) staff response to your public comments at the January 23rd Commission meeting. Before I respond to your comments directly, I would like to take the opportunity to outline the current status of the line as well as the Rail Commission's relationship with the Zanesville and Western (Z&W) to date.

Rail Line History

- The Glass Rock Line (Glass Rock) is a 14.8-mile rail line in Perry & Muskingum Counties;
- The Glass Rock only connects to the rail network through the Ohio Southern Line in Muskingum County. The line terminates east of Glenford in Perry County and the connection to the Ohio Southern has been removed for several years.
- The State of Ohio acquired the Glass Rock from Conrail in 1982 as part of the larger Ohio Southern (OSRR) Line acquisition.
- OSRR was sold to Ohio Central Railroad, a G&W predecessor, in 2006.
- The Rail Commission excluded the Glass Rock from the OSRR transaction because OSRR determined there were no viable business opportunities on the line and planned to scrap the line at that time.
- The last freight traffic on the line was in 1996. That shipper, a sand facility, has since closed with the property divided and sold.
- The Rail Commission consulted numerous times with OSRR, as the connecting railroad, about freight opportunities over the years, but none have come to fruition.
- Currently no freight railroad with common carrier rights on the line exists. The Rail Commission has common carrier responsibilities on the line which it will retain upon transfer of the line. Freight rail service can be reestablished on the line if a viable freight customer is identified that would justify the significant capital investment.

Current Condition of the Line

- Two at-grade railroad crossings on state routes were removed by ODOT due to safety concerns related to the geometry of the crossings as well as the lack of maintenance of the crossings. All other at-grade crossings have been paved over.

1980 West Broad Street
Mall Stop #3140
Columbus, OH 43223 U.S.A.

614 1644 0306
rail.ohio.gov

This is the letter responsible for the 6-0 vote by ORAC Full Commission to transfer the line to MVPD.

- There are washouts in at least two locations close to connection with the OSRR that would require significant investment before any through service could resume.
- There is significant overgrowth across nearly all of the corridor that is currently not in use by the Z&W for the current excursion operation.
- There are multiple bridges on the line. There have been no formal bridge inspections on the line in at least 17 years.
- There is abandoned rail equipment on tracks which is in poor condition. The equipment is unprotected and open to animals/vandals/elements.

Current Lease Details

- The Glass Rock line has been leased to Z&W, a non-profit volunteer organization, since 2008.
- Z&W operates tourists trains on approximately one mile of track in Perry County.
- Z&W leases the entire line, but after numerous safety concerns and contract violations, have been limited to just the operational section without prior written approval of the Rail Commission since 2018.
- Because of a lack of resources and previous safety concerns about Z&W maintenance of the non-operating sections, the Rail Commission, with the assistance of ODOT, needed to address safety issues in the past including the crossing surface on SR 93 and flooding in East Fultonham.
- Current lease with Z&W is valid through 2031.

Given the situation outlined above, the current state of the line is not sustainable. In its current state, this line is a potential liability to the state. The Rail Commission has continually dealt with trespassing and nuisance complaints. In one instance the nuisance complaint was the result of the Z&W activity in the East Fultonham area because of the stockpiling of discarded railroad ties which created a public nuisance as well as additional potential environmental liabilities for the state as the rail line owner.

While the Z&W has desired to expand operations, it does not have the resources to achieve this goal. For instance, the Z&W was awarded a \$120,000 grant from the State to rehabilitate a bridge over Turkey Run to expand scenic railroad operations. The grant required a 50% match which Z&W could not provide. For the most recent "identified" freight customer, it is estimated that rehabilitation of the rail line would have been in the millions of dollars to repair and build the necessary rail infrastructure as proposed.

ORDC Plans to Convey Corridor to the Muskingum Valley Park District

Given the above information, Rail Commission staff determined that the only viable way to preserve the rail corridor is through the Trails Act and the execution of an Interim Trails Use Agreement. The Rail Commission is working with the Muskingum Valley Park District, who has a history of trail development, to keep the corridor viable. During the due diligence process, the Rail Commission determined that the abandonment proceedings previously initiated by Conrail were never completed. As a result, those abandonment proceedings needed to be resumed by the Rail Commission in order to preserve the corridor. As part of the formal process at the Surface Transportation Board (STB), any railroads interested in purchasing the line could have filed an "offer of financial assistance" as part of the abandonment. There were no offers of financial assistance submitted within the required timelines of the STB.

There were many statements made by representatives of the Z&W to the Rail Commission at the meeting that I would like to address directly:

- *As Perry and Muskingum Counties continue to grow, there will be a need for freight rail operations.* The latest population projections from the Ohio Department of Development do not indicate population growth for Perry or Muskingum Counties. Additionally, there is limited utility service and workforce in the area for the types of customers that would justify the large investment needed to restart and provide consistent rail service. Furthermore, when embarking on this effort, Rail Commission staff consulted with Perry County officials. Perry County officials' interest in the line was related to tourism, not freight. They stated their desire to develop the corridor in such a way that supports tourism because of the rail line's proximity to Jonathan Creek, which is a favorite kayak route.
- *A customer has been identified that will require freight rail service.* While there have been many attempts over the years, no proposal has advanced to the point of a cost estimate or service plan. As stated above, for the most recent inquiry, a very high level estimate by Rail Commission staff was several million dollars because the proposal would require rehabilitation of several miles of the existing rail line, significant additional new track to connect the facility to the Glass Rock line, installation of a new at-grade railroad-highway rail crossing and on-site rail infrastructure for loading and unloading rail cars.
- *If transfer of the line occurs, trackage will be removed along with the trains, cutting off the two counties' access to a scenic rail experience.* Z&W's current lease remains intact and current scenic railroad operations are not impacted by a transfer. The lease will be part of the transfer with the property to Muskingum Valley Park District. The Rail Commission intends to clear the line from the Fultonham Switch east of SR 93 to just west of Fultonham Yard at Old Town Road. This will include disposing of the rail equipment that has been discarded on the line as well as removing the rail, track materials, and ties from this portion of the corridor. No removal of rail infrastructure west of Old Town Road, which is used for current Z&W operations, is planned by the Rail Commission.

For the above reasons, the Rail Commission sees the transfer of the line to the Muskingum Valley Park District as the only viable way to preserve both the current excursion operation as well as the rail corridor for potential future use should the opportunity arise. Without an Interim Trails Use Agreement for the line, the underlying real estate of the rail corridor will be at risk to legal challenges to the state's ownership of the corridor, which could include portions currently used for excursion operations.

Sincerely,



Matthew Dietrich
Executive Director



DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	CERT	COPY
07/14/2023	202319404016	DISSOLUTION (DIS)	50.00	0.00	0.00	0.00

Receipt

This is not a bill. Please do not remit payment.

BLAKE, BEDNAR, BLAKE & RICHARDSON
4110 SUNSET BLVD.
STEUBENVILLE, OH 43952

**STATE OF OHIO
CERTIFICATE**

Ohio Secretary of State, Frank LaRose
593209

It is hereby certified that the Secretary of State of Ohio has custody of the business records for
OHI-RAIL CORP.

and, that said business records show the filing and recording of:

Document(s)
DISSOLUTION

Document No(s):
202319404016

Effective Date: 07/13/2023



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the
Secretary of State at Columbus, Ohio this
14th day of July, A.D. 2023.

Ohio Secretary of State

Form 561 Prescribed by:



Toll Free: 877.767.3453 | Central Ohio: 614.466.3910

OhioSoS.gov | business@OhioSoS.govFile online or for more information: OhioBusinessCentral.gov

Certificate of Dissolution

(For-Profit, Domestic Corporation)

Filing Fee: \$50

Form Must Be Typed

Complete the following information.

The corporation named below has adopted a resolution of dissolution.

Name of Corporation

OHI-RAIL CORP.

Charter Number

593209

Location of Principal Office in Ohio

Richmond

City

Jefferson

County

OH

State

The internet address of each domain name held or maintained by or on behalf of the corporation:

☒ The corporation did not hold or maintain any domain names.

**Notice of Dissolution to Creditors and Claimants against Corporation
(pursuant to ORC 1701.87)**

Notice of Dissolution of OHI-RAIL CORP.

Name of Corporation

OHI-RAIL CORP.

Name of Corporation

an Ohio corporation (the "corporation") has dissolved. You must present to the corporation any claim against the corporation, including any claim by a creditor or any claim that is conditional, unmatured, or contingent upon the occurrence or nonoccurrence of future events, pursuant to the following:

1. All claims shall be presented in writing and shall identify the claimant and contain sufficient information to reasonably inform the corporation of the substance of the claim.
2. The mailing address to which the person must send the claims is:

992 State Route 43

Address

Richmond

City

Ohio

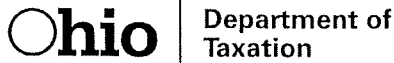
State

43944

Zip Code

3. The deadline by which the corporation must receive the claim is sixty (60) days after the date this notice is given (the "Deadline").
4. The claim will be barred if the corporation does not receive the claim by the deadline.

The corporation may make distributions to other creditors or claimants, including distributions to shareholders of the corporation, without further notice to the claimant.



PO Box 182382
Columbus, OH 43218-2382
tax.ohio.gov



SHAWN M. BLAKE, ESQ.
BLAKE, BEDNAR, BLAKE & RICHARDSON
4110 SUNSET BLVD
STEUBENVILLE, OH 43952
USA

July 05, 2023
Contact ID: 4763620210

RE: Certificate of Tax Clearance
Entity Name: Ohi-Rail Corp.
Ohio Charter #: 00593209
Certificate Issue Date: 07/05/2023

Up to and including the certificate issue date, all taxes administered by the Tax Commissioner have been filed and paid in full.

This certificate does not preclude the Department from issuing a bill and/or assessment, for any tax returns and/or tax liabilities and fees becoming due, after the certificate issue date. Also, this certificate does not preclude the Department from examining or auditing any period.

This Certificate of Tax Clearance is valid for thirty (30) days after issuance. The Ohio Secretary of State requires it to be submitted with their prescribed forms.

Patricia Harris
Tax Commissioner

If responding to this notice, please use one of the following options:

- **Electronically:** Online Notice Response Service (ONRS) at gateway.ohio.gov or tax.ohio.gov/ONRS
- **Email:** Dissolution@tax.state.oh.us
- **eFax:** 1-206-984-0378
- **Mail:** Ohio Department of Taxation, PO Box 182382, Columbus, OH 43218-2382

Please contact the Department with any questions.

Tax Release Unit
Phone: 1-855-995-4422
TTY/TDD: 1-800-750-0750



May 2, 2025

William Ratz
5705 SR204
Mt. Perry, Ohio 43760

Dear Mr. Ratz:

This letter is to summarize two recent emails that were sent (April 11, 2025 and April 23, 2025) providing you with a status update on the transition of the Glass Rock Line and inform you of other groups' interest in any surplus rail equipment.

Following Commission approval at the March 20, 2025 meeting, a trail use agreement between the Muskingum Valley Park District and the Ohio Rail Development Commission was finalized at the Surface Transportation Board. As we have discussed, the agreement requires the removal of equipment and track east of Old Town Road in Muskingum County. As communicated to you in December, publicly stated at the January 23, 2025 Commission meeting, and in my February 14, 2025 letter to you, any equipment owned by Z&W needs to be removed from this area prior to the Rail Commission contractors initiating the work.

Currently we do not have a date certain for this work because the Rail Commission is finalizing bid documents. However, our goal is to have this work completed by the end of this calendar year and we will notify you once we have a confirmed date for the clearing. The Rail Commission is compiling a list of equipment in the area based on previous reports from Z&W which we will provide to you prior to the work commencing. Based on the current information, it appears that all but two rail cars currently east of SR-93 are the property of Z&W.

In addition, an email sent on April 23, 2025, in which you were copied outlined the Ohio Railway Museum's potential interest in rail equipment for their collection. Please see below:

Josh Fingerhut
Vice President
The Ohio Railway Museum
jfingerhut2014@gmail.com
614-256-0580

1980 West Broad Street
Mail Stop #3140
Columbus, OH 43223 U.S.A.

614 j 644 0306
rail.ohio.gov

The State of Ohio is an Equal Opportunity Employer and Provider of ADA Services

The Gallipolis Railroad Freight Station Museum has also reached out to the Ohio Department of Transportation to inquire about the equipment. We were asked to pass along their contact information to facilitate discussions. Please see below:

Jeny Davis
Gallipolis Railroad Freight Station Museum
Board Vice President
jerrydavidddavis@hotmail.com
740-339-3726

Randy Breech, P.E.
Lead Designer (pro-bono) and Staunch Museum Supporter
breecheng@att.net
740-709-1441

John Westfall
Local Government Agency Sponsor, Lead
City of Gallipolis
citymanager@gallipoliscity.com
(740) 446-1789

Unless instructed by you otherwise, the Rail Commission will forward your contact information in response to each of the equipment inquiries so they may reach out directly.

Please feel free to contact me at 614-644-0295 or Matt.Dietrich@dot.ohio.gov with any questions.

Sincerely,

#

Matthew Dietrich
Executive Director