

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820

FACSIMILE: (202) 663-7849

CRYSTAL M. ZORBAUGH

ENTERED
Office of Proceedings
January 12, 2023
Part of
Public Record(202) 663-7831 (Direct Dial)
E-Mail: czorbaugh@bakerandmiller.com

January 12, 2023

VIA E-FILINGCynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001Re: Ohi-Rail Corporation – Discontinuance of Service and Lease Operations– In Perry
and Muskingum Counties, OH, AB-1321X

Dear Ms. Brown:

Enclosed is a verified notice of exemption (“Notice”) pursuant to 49 C.F.R. Part 1152, Subpart F – Exempt Abandonments and Discontinuances of Service and Trackage Rights, to permit Ohi-Rail Corporation (“Ohi-Rail”) to discontinue service and terminate its lease operations over approximately 14.8 miles of rail line owned by the Ohio Rail Development Commission (“ORDC”) including the Fultonham Running Track from milepost 0.0 to milepost 3.1 (“Glass Rock-East”) and Z&W Industrial Track from milepost 45.8 to milepost 57.5 (“Glass Rock-West”) (the “Line” or the “Glass Rock Branch”). There have been no customers on the Line proposed for discontinuance for well over two years.

Pursuant to 49 C.F.R. § 1002.2(f)(21)(ii), the required filing fee of \$4,600.00 has been paid on pay.gov. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7831 or by e-mail: czorbaugh@bakerandmiller.com. If I am unavailable, you may contact Spencer M. Naake, who can be reached at (202) 663-7829 or by e-mail at snaake@bakerandmiller.com.

Sincerely,

/s/ *Crystal M. Zorbaugh*FILED
January 12, 2023
SURFACE
TRANSPORTATION BOARDCrystal M. Zorbaugh
Attorney for Ohi-Rail Corporation

cc: Alan Klodell, Matt Dietrich, Megan McClory, and Thomas Burns

FEE RECEIVED
January 12, 2023
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1321X

**OHI-RAIL CORPORATION – DISCONTINUANCE OF SERVICE AND LEASE
OPERATIONS – IN PERRY AND MUSKINGUM COUNTIES, OH**

**VERIFIED NOTICE OF EXEMPT DISCONTINUANCE
PURSUANT TO 49 C.F.R. § 1152.50**

**Crystal M. Zorbaugh
Spencer M. Naake
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

January 12, 2023

Attorneys for Ohi-Rail Corporation

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1321X

**OHI-RAIL CORPORATION – DISCONTINUANCE OF SERVICE AND LEASE
OPERATIONS – IN PERRY AND MUSKINGUM COUNTIES, OH**

**VERIFIED NOTICE OF EXEMPT DISCONTINUANCE
PURSUANT TO 49 C.F.R. § 1152.50**

Ohi-Rail Corporation (“Ohi-Rail”) hereby submits a verified notice of exemption (“Notice”) pursuant to 49 C.F.R. part 1152, subpart F – Exempt Abandonments and Discontinuances of Service and Trackage Rights, for Ohi-Rail to discontinue service and terminate its lease operations over approximately 14.8 miles of rail line owned by the Ohio Rail Development Commission (“ORDC”) including the Fultonham Running Track from milepost 0.0 to milepost 3.1 (“Glass Rock-East”) and Z&W Industrial Track from milepost 45.8 to milepost 57.5 (“Glass Rock-West”) (the “Line” or the “Glass Rock Branch”).¹ There have been no customers on the Line proposed for discontinuance for well over two years.

In accordance with the requirements of 49 C.F.R. §§ 1152.50(b) and (d), Ohi-Rail provides the following information in support of the Notice.

¹ In February 2020, ORDC filed a declaratory order with the Board seeking confirmation that the Line, which was authorized for abandonment in 1982 but not fully abandoned remained subject to the Board’s jurisdiction and remained eligible for interim trail use/rail banking under the National Trails System Act, provided the current operator of the line requests and receives Board authority to discontinue common carrier service. In a decision served December 22, 2020, the Board granted ORDC’s declaratory order and held that ORDC or any potential trail sponsor could pursue interim trail use/rail banking under the Trails Act upon Ohi-Rail being authorized to discontinue service on the Line. See Ohio Rail Development Commission – Petition for Declaratory Order, FD 36387 (STB served December 22, 2020) (“Dec. 20th Decision”).

Certification: 49 C.F.R. § 1152.50(b)

Ohi-Rail certifies that the Line satisfies the criteria for discontinuance under the exemption provisions at 49 C.F.R. part 1152, subpart F. See Combined Certification and Verification of Richard Delatore, Vice President for Ohi-Rail Corporation, (attached hereto as part of Exhibit A). During the past two years, Ohi-Rail has not provided local or overhead common carrier service over the Line, nor has Ohi-Rail received any requests for common carrier service over it. Furthermore, no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending with the Surface Transportation Board (“Board”) or with any U.S. District Court nor has such a complaint been decided in favor of complainant during the past two years.

Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2)

The proposed discontinuance will be consummated on or after March 3, 2023 (50 or more days after filing the Notice).

Additional Information Required: 49 C.F.R. §§ 1152.22(a)(1)-(4), (7)-(8) and (e)(4)

Exact name of applicants (49 C.F.R. § 1152.22(a)(1)):

Ohi-Rail Corporation

Whether applicants are common carriers by railroad (49 C.F.R. § 1152.22(a)(2)):

Ohi-Rail is a common carrier by railroad subject to the Board’s jurisdiction under 49 U.S.C. Subtitle IV, Chapter 105.

Relief sought (49 C.F.R. § 1152.22(a)(3)):

Pursuant to this verified notice of exemption, Ohi-Rail is seeking authority to discontinue service and terminate its lease operations over approximately 14.8 miles of rail line including the Fultonham Running Track from milepost 0.0 to milepost 3.1 and Z&W Industrial Track from milepost 45.8 to milepost 57.5 in Perry and Muskingum Counties, OH.

Map (49 C.F.R. § 1152.22(a)(4)):

A map showing the location of the Line is attached hereto as Exhibit B.

Applicants' representatives (49 C.F.R. § 1152.22(a)(7)):

The representatives of the railroads to whom correspondence regarding these proceedings should be sent are as follows:

Crystal M. Zorbaugh
Spencer M. Naake
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

USPS ZIP codes (49 C.F.R. § 1152.22(a)(8)):

The Line traverses portions of the following United States Postal Zip Codes: 43701, 43735, 43739, 43760, 43777, and 43791.

Suitability of the Line for Other Public Purposes (49 C.F.R. § 1152.22(e)(4)):

For the right-of-way underlying the Line proposed for abandonment, ORDC has a permanent and perpetual easement interest; thus, ORDC has a corridor available for redeployment for alternative public use(s). In the Dec. 20th Decision, the Board found based on the facts presented that ORDC may pursue interim trail use/rail banking under the Trails Act without seeking to revoke its exempt status or commencing a new abandonment proceeding. See Dec. 20th Decision, at 6. ORDC is interested in railbanking the Line and has identified a trails proponent, Perry County, Ohio, who will be filing a certificate of interim trail use or abandonment ("CITU") to railbank the Line pursuant to the National Trails Act. The Line does not contain any federally granted right-of-way. As appropriate, ORDC is willing promptly to make available any information in its possession to anyone so requesting it.

Labor Protection

The interests of affected railroad employees, if any, will be protected by the conditions discussed in Oregon Short Line R.R. — Abandonment — Goshen, 360 I.C.C. 91 (1979). ORDC does not anticipate that any employees will be adversely affected by the proposed discontinuance.

Certifications

Attached hereto as Exhibit C are Certificates of Service and Publication certifying compliance with the advance notice and newspaper publication requirements set forth at 49 C.F.R. § 1152.50(d)(1) and 49 C.F.R. § 1105.12, respectively. For reasons set forth in the “Environmental and Historic Report” section below, the certification of service requirement at 49 C.F.R. § 1105.11 (transmittal of Environmental and Historic Reports) is inapplicable here.

Environmental and Historic Report

In the Dec. 20th Decision, the Board found based on the facts presented that ORDC may pursue interim trail use/rail banking under the Trails Act without seeking to revoke its exempt status or commencing a new abandonment proceeding. See Dec. 20th Decision, at 6. As such, the preparation or submission of an Environmental and/or Historic Report is not required here.

Respectfully submitted,

/s/ ***Crystal M. Zorbaugh***

Crystal M. Zorbaugh
Spencer M. Naake
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

January 12, 2023

Attorneys for Ohi-Rail Corporation

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1321X

**OHI-RAIL CORPORATION – DISCONTINUANCE OF SERVICE AND LEASE
OPERATIONS – IN PERRY AND MUSKINGUM COUNTIES, OH**

**VERIFIED NOTICE OF EXEMPT DISCONTINUANCE
PURSUANT TO 49 C.F.R. § 1152.50**

COMBINED CERTIFICATION AND VERIFICATION

Combined Certification and Verification

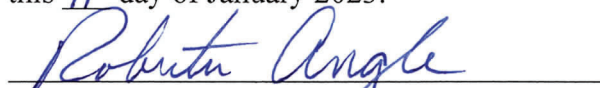
I, Richard Delatore, Vice President for Ohi-Rail Corporation, make oath that the approximately 14.8 miles of rail line owned by the Ohio Rail Development Commission including the Fultonham Running Track from milepost 0.0 to milepost 3.1 and Z&W Industrial Track from milepost 45.8 to milepost 57.5 in Perry and Muskingum Counties, OH (the "Line"), over which service is to be discontinued, was subject to his supervision and direction; that Ohi-Rail has not moved any local traffic over the Line for well over two years, that Ohi-Rail has not moved any overhead traffic over the Line for at well over two years and that overhead traffic, if there were any, could be rerouted over other lines; and that no formal complaint filed by a user of rail service on the Line or a state or local government entity acting on behalf of such user regarding cessation of service over the Line either is pending before the Surface Transportation Board or any U. S. District Court has been decided in favor of the complainant within the two-year period.

I further hereby verify under penalty of perjury that to the best of my knowledge, the foregoing abandonment notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of Ohi-Rail in connection with this proceeding before the Surface Transportation Board.



Richard Delatore
Vice President
Ohi-Rail Corporation

Subscribed and sworn to before me
this 11th day of January 2023.


Notary Public

My commission expires:

April 11, 2024



ROBERTA ANGLE
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES
04-11-24

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1321X

**OHI-RAIL CORPORATION – DISCONTINUANCE OF SERVICE AND LEASE
OPERATIONS – IN PERRY AND MUSKINGUM COUNTIES, OH**

**VERIFIED NOTICE OF EXEMPT DISCONTINUANCE
PURSUANT TO 49 C.F.R. § 1152.50**

EXHIBIT B

MAP

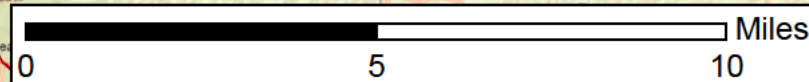
Glass Rock Line and Ohio Southern Rail Line

Exhibit A



Ohio Rail Lines

-  Glass Rock East
(Formerly Fultonham Running Track)
-  Glass Rock West
(Formerly Z&W Industrial / Secondary Track)
-  OH Southern RR
-  Other Active Lines



Source: ORDC Rail Data

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1321X

**OHI-RAIL CORPORATION – DISCONTINUANCE OF SERVICE AND LEASE
OPERATIONS – IN PERRY AND MUSKINGUM COUNTIES, OH**

**VERIFIED NOTICE OF EXEMPT DISCONTINUANCE
PURSUANT TO 49 C.F.R. § 1152.50**

EXHIBIT C

**CERTIFICATES OF
SERVICE/PUBLICATION**

Certificate of Service of Advance Notice

49 C.F.R. § 1152.50(d)(1) – Notice

I certify that, on December 21, 2021, in keeping with 49 C.F.R. § 1152.50(d)(1), I caused the following parties to be served with the written notice of intent of Ohi-Rail Corporation's intent to invoke the Board's notice of exemption procedures to discontinue service and terminate its lease operations over approximately 14.8 miles of rail line owned by the Ohio Rail Development Commission including the Fultonham Running Track from milepost 0.0 to milepost 3.1 and Z&W Industrial Track from milepost 45.8 to milepost 57.5 in Perry and Muskingum Counties, OH (the "Line"). I also certify that the Line does not contain federally granted rights-of-way.

DOT/PUC

Jack Marchbanks, Director
Ohio Department of Transportation
Ohio Rail Development Commission
1980 West Broad Street
Columbus, Ohio 43223

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215-3793

Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program)

David Dorfman
Headquarters Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA
Railroads for National Defense Program
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

The National Park Service, Conservation and Outdoor Recreation Division

Mr. Stephan Nofield
National Park Service
Rivers, Trails and Conservation Assistance Program
1849 C Street NW, Room 1344
Washington DC 20240

U.S. Department of Agriculture, Chief of the Forest Service

Vicki Christiansen, Chief
Forest Service
U.S. Department of Agriculture
Sidney R. Yates Federal Building
201 14th Street SW
Washington, DC 20024

January 12, 2023

/s/ ***Crystal M. Zorbaugh***

Crystal M. Zorbaugh
Attorney for Ohi-Rail Corporation

Certificate of Newspaper Publication

49 C.F.R. § 1105.12 – Newspaper Notice

I certify that a “Notice of Intent to Discontinue Rail Service” was published in the form prescribed by the Board for discontinuance notices of exemption (49 C.F.R. § 1105.12). The notice was published on December 29, 2021, in The Perry County Tribune, a newspaper of general circulation in the USPS ZIP codes 43701, 43735, 43739, 43760, 43777, and 43791 in Perry and Muskingum Counties, OH. Attached is an affidavit of publication and tear sheet from the newspaper.

January 12, 2023

/s/ ***Crystal M. Zorbaugh***

Crystal M. Zorbaugh
Attorney for Ohi-Rail Corporation

Attachment 1 -

Affidavit of Publication and Tear Sheets from The Perry County Tribune

Affidavit of Publication
The State of Ohio
Perry County

BAKER & MILLER PLLC
ELEANOR CASTILLO
2401 PENNSYLVANIA AVE. STE. 300
WASHINGTON, DC 20037

Account: 177426
Ticket: 645642
RE: Ohi-Rail Corp Discontinuance

Before, the undersigned, a Notary Public of said County and State, duly commissioned, qualified, and authorized by law to administer oaths, personally appeared Tom Leake, Who being first duly sworn, deposes and says: that he is the Agent of The Perry County Tribune, published, issued and entered as second class mail in the city of New Lexington: that he is authorized to make this affidavit and sworn statement: that the notice or other legal advertisement, a true copy of which is shown here to, was published in The Perry County Tribune on the following date(s): 12/29/21



Signature of sworn person above

Sworn to and subscribed before me this 12/29/21

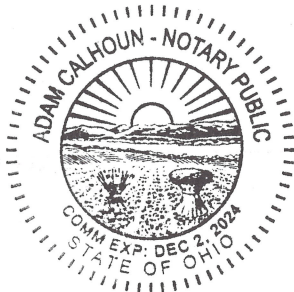


Signature of Notary Public

Cost of Notice: \$152.20
Published on: 12/29/2021

The Perry County Tribune
116 South Main St.
New Lexington, OH 43764

FED ID 61-1731416



**LEGAL NOTICE
NOTICE OF INTENT TO DISCONTINUE
RAIL SERVICE
AB-1321X**

Ohi-Rail Corporation ("Ohi-Rail") hereby gives notice that on or about January 14, 2022, it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption pursuant to 49 C.F.R. Part 1152 Subpart F — Exempt Abandonments and Discontinuances of Service and Trackage Rights, permitting Ohi-Rail to discontinue service and terminate its lease operations over approximately 14.8 miles of rail line owned by the Ohio Rail Development Commission ("ORDC") including the Fultonham Running Track from milepost 0.0 to milepost 3.1 ("Glass Rock-East") and Z&W Industrial Track from milepost 45.8 to milepost 57.5 ("Glass Rock-West") (the "Line" or the "Glass Rock Branch"). The Line traverses United States Postal Zip Code territories 43701, 43735, 43739, 43760, 43777 and 43791. There have been no customers on the Line proposed for discontinuance for over two years. This proceeding will be docketed as AB-1321X.

The proposed action entails the discontinuance of rail service and lease operations over the Line and further Board approval would be required for ORDC to abandon service on the Line. Accordingly, this proceeding is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49C.F.R. § 1105.8(b), and the Board will not prepare an environmental assessment.

Appropriate offers of financial assistance ("OFA") to continue rail service under a subsidy can be filed with the Board. Because the proposed action is for the discontinuance of service over, but not the abandonment of the Line, requests for public use conditions and rail-banking/trails will not be accepted. An original and 10 copies of any pleading in response to the proposed discontinuance of service (such as offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423 [See 49 C.F.R. §§ 1104.1(a) and 1104.3(a)], and one copy must be served on ORDC's representative [See 49 CFR § 1104.12(a)]. Questions regarding OFA or other such matters may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0230. Copies of any comments or requests for specific Board action should be served on ORDC's representative: Crystal M. Zorbaugh, BAKER & MILLER PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037; phone: 202-663-7820; fax 202-663-7849.

Perry Tribune 645642 12-29

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1321X

**OHI-RAIL CORPORATION – DISCONTINUANCE OF SERVICE AND LEASE
OPERATIONS – IN PERRY AND MUSKINGUM COUNTIES, OH**

**VERIFIED NOTICE OF EXEMPT DISCONTINUANCE
PURSUANT TO 49 C.F.R. § 1152.50**

**DRAFT NOTICE OF EXEMPTION
[CAPTION SUMMARY]**

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[AB-1321X]

Ohi-Rail Corporation – Discontinuance of Service and Lease Operations – In Perry and Muskingum Counties, OH

On January 12, 2023, Ohi-Rail Corporation (“Ohi-Rail”) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F–Exempt Abandonments for Ohi-Rail to discontinue service over approximately 14.8 miles of rail line including the Fultonham Running Track from milepost 0.0 to milepost 3.1 and Z&W Industrial Track from milepost 45.8 to milepost 57.5 (the “Line”). The Line traverses United States Postal Zip Code territories 43701, 43735, 43739, 43760, 43777, and 43791. The Line is located in Perry and Muskingum Counties, OH. There have been no customers on the Line proposed for discontinuance for well over two years.

Note - In February 2020, ORDC filed a declaratory order with the Board seeking confirmation that the Line, which was authorized for abandonment in 1982 but not fully abandoned remained subject to the Board’s jurisdiction and remained eligible for interim trail use/rail banking under the National Trails System Act, provided the current operator of the line requests and receives Board authority to discontinue common carrier service. In a decision served December 22, 2020, the Board granted ORDC’s declaratory order and held that ORDC or any potential trail sponsor could pursue interim trail use/rail banking under the Trails Act upon Ohi-Rail being authorized to discontinue service on the Line. See Ohio Rail Development Commission – Petition for Declaratory Order, FD 36387 (STB served December 22, 2020) (“Dec. 20th Decision”).

Ohi-Rail certified that: (1) no local traffic has moved over the Line for at least 2 years; (2) that no overhead traffic has moved over the Line for well over two years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board ("Board") or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the applicable requirements at 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under Oregon Short Line Railroad – Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. § 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to continue rail service under a subsidy has been received, this exemption will be effective on March 3, 2023, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 C.F.R. § 1152.27(c)(2) must be filed by _____.¹ Petitions to reopen must be filed by _____, 2023, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

¹ Each OFA must be accompanied by the filing fee, which is currently set at \$2,000. See 49 C.F.R. § 1002.2(f)(25). Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

A copy of any petition filed with the Board should be sent to Railroads' representative:
Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300,
Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

As stated above, in a prior Board declaratory order proceeding, the Board found based on facts related to the Line's history that ORDC could pursue interim trail use/rail banking for the Line under the Trails Act without seeking to revoke its exempt status or commencing a new abandonment proceeding. See ("Dec. 20th Decision"). As such, the preparation or submission of an Environmental and/or Historic Report is not required here. Public use and/or trail use/rail banking conditions will be imposed in a subsequent decision.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: _____, 2023.

By the Board, _____, Director, Office of Proceedings