

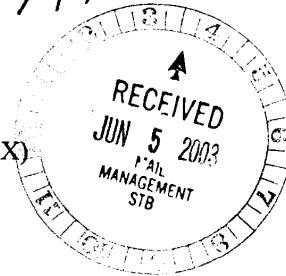
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Part of
Public Record

Before the Surface Transportation Board

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



Joint Petition of Rails-to-Trails Conservancy and
South Georgia Rails to Trails for Partial
Reconsideration and/or Clarification of Order Served May 16, 2003

The Rails-to-Trails Conservancy ("RTC") and South Georgia Rails to Trails ("SGRT") hereby submit this joint motion to the Surface Transportation Board ("STB") for partial reconsideration of, and clarification relating to, the Board's order in the above-captioned proceeding served May 16, 2003.

RTC and SGRT agree with the statement in the Board's order that "it would be inappropriate for us to determine whether [RTC/SGRT] might be entitled to any recompense in this situation, as we do not oversee, review, approve, or interpret the terms of the parties' trail use agreements. Such issues are for a court to address." Georgia Great S. Div. S.C. Cent. R.R. – Abandonment and Discontinuance Exemption – Between Albany & Dawson, In Terrell, Lee & Dougherty Counties, GA, STB Dkt. No. Ab-389 (Sub-No. 1X), at 6 (STB served May 16, 2003) Nonetheless, the order also concludes by stating that, "[u]nder the statute, the trail sponsor can acquire only the right to use the corridor on an interim basis for trail use, and trail use may continue only until the carrier (or another approved rail service provider) restores rail service on all or part of the line." *Id.* at 7. This statement could be read to suggest that, even if the railroad attempts to convey all of its property interest to the trail sponsor (including fee-owned parcels), the railroad can convey no more than a right of use (presumably a form of easement or license),

and/or that any transfer by the railroad of its property is voided upon re-activation of rail service, without regardless to any contractual provisions or rights that are thereby abrogated.

Such an interpretation this Board's order would, in effect, be inconsistent with this Board's recognition that "we do not oversee, review, approve, or interpret the terms of the parties' trail use agreements." Id. at 6. Further, as this Board's order also recognizes, Section 8(d) of the National Trails Systems Act explicitly recognizes that "rail carriers can transfer lines to interim trail sponsors by means of donation, lease, sale or otherwise. 16 U.S.C. 1247(d)." Id., at 7 n.6. Indeed, the Interstate Commerce Commission ("ICC") has previously acknowledged that:

The amendment [1247(d)] does not prohibit alienation of rights-of-way that are proposed for interim trail use. Indeed, the amendment specifically lists several forms of transfer that may be used where appropriate. Therefore, as long as the transfer agreement discloses the status of the involved property, including its being subject to Commission jurisdiction for future restoration of rail service (and as long as the transfer is consistent with applicable State property law), trail use can occur whether the involved railroad transfers or retains its interest in the right-of-way.

Rail Abandonments - Use of Rights of Way as Trails, 2 I.C.C. 2d 591, 599 (1986).

In practice, both grantors and grantees of rail property under the railbanking statute have relied on the plain language of the statute permitting alienation of all the railroad's property interests, and the 1986 statement of this Board's predecessor endorsing such alienation. The vast majority of railbanking agreements thus envision the transfer of all the grantor's property interest (at least other than underground utility rights) by quitclaim deed to the grantee, frequently a government agency, but sometimes a private conservation organization. Such alienation permits the granting railroad to seek federal income tax credits for donations where the value of the corridor is greater than the amount paid by the grantee.

Such alienation also protects the railroad from liability for taxes, torts and management, because it is no longer the owner of the property. Such alienation also allows the transaction to qualify for various state and federal grants, which would not be available if something less than a fee interest were all that could be transferred. Little funding would be available for corridor preservation, let alone trail development, if this Board is now suggesting that deeds which purport to convey all the granting railroad's interests were now void or somehow meaningless. Such a construction would jeopardize the continued utility of 16 U.S.C. § 1247(d) as a means to preserve corridors for future rail reactivation.

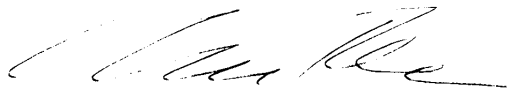
Further, under 16 U.S.C. § 1247(d), a railbanker is essentially equivalent to a railroad in its authority to transfer railbanked property. This Board allows railroads broad discretion in property management so long as the railroad's ability to provide service is not jeopardized. Certainly neither this Board nor the ICC has heretofore condoned uncompensated taking of property owned by a railroad when this Board orders transfer of that property to another.¹ A railbanking entity in general should be treated no worse than a railroad when it comes to Board orders in connection with reactivation.

Here, RTC executed a binding contract with Georgia Southwestern Railroad ("GSWR"), which contract acknowledges GSWR's receipt of valuable consideration from RTC, and GSWR executed a deed, which was duly recorded, evidencing that the GSWR has transferred all its

¹ The Board administers many statutes which allow it to compel transfer of rail property from one party to another, but in all cases it has construed that power to be contingent upon the payment of compensation, either as established by the Board in the event of dispute or by voluntary agreement among the parties. *E.g.*, 49 U.S.C. § 10904 (OFA's), § 10901(d) (crossing lines), § 10907 (rail development). Under 16 U.S.C. § 1247(d), this Board's predecessor determined to leave the issue of terms and conditions of transfer up to private negotiation.

right, title, and ownership interest in the line to RTC. Without clarification from this Board, RTC/SGRT is concerned that the last sentence of the order of May 16, 2003 might be construed by local law enforcement authorities and/or state court as voiding the deed by which RTC acquired title to the interim trail, thereby vesting in GSWR ownership of the real property notwithstanding the binding contract and duly recorded deed transferring title of such property to RTC. To the extent this deed is found to be somehow void as a result of the STB's order of May 16, 2003, the result would, in RTC's view, be to "take" RTC's property without due process of law. See Penn Central Corporation v. U.S. Railroad Vest Corporation, 955 F.2d 1158 (7th Cir. 1992). Clarification is needed in order if this Board did not intend for its May 16, 2003 order to be construed by local law enforcement authorities and/or state courts as voiding RTC's property interest in the corridor, notwithstanding the plain language of the private contract and deed executed by the parties.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Joint Petition for Partial Reconsideration and/or Clarification was mailed to the following persons with a copy thereof, on this 2 day of June, 2003.

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