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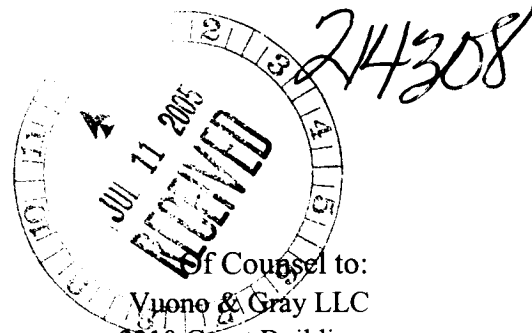
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Of Counsel to:
Vuono & Gray LLC
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Pittsburgh, PA 15219
(412) 471-1800
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July 5, 2005

Secretary, Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

EXPEDITED CONSIDERATION
REQUESTED

Re: Docket No: AB 865-0-X, Honey Creek Railroad, Inc. v. Abandonment
Exemption – Henry County, Indiana

Dear Sir:

Enclosed for filing on behalf of Honey Creek Railroad, Inc. ("HCR") in the above captioned proceeding, please find the original and ten copies of an Emergency Petition to Extend Abandonment Consummation Date Pendente Lite. Expedited consideration of this Petition is urgently requested in order to preserve the status quo pendent lite with respect to the HCR line. HRC has been forced to initiate legal proceedings to protect its property from the actions of an adjacent land owner who has destroyed and/or removed rail, track materials, switches and ties from the HCR right of way while asserting ownership to same.

Copies of this Petition have been served on all parties of record.

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson, Esq.

Attorney for Honey Creek Railroad Company

RRW/bab

Enclosures

xc: Honey Creek Railroad, Inc.
William B. Keaton, Esq.
John H. Brooke, Esq.

ENTERED
Office of Proceedings

JUL 11 2005

Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

DOCKET NO: AB 865-0-X

HONEY CREEK RAILROAD, INC. vs.
ABANDONMENT EXEMPTION – HENRY COUNTY, INDIANA

EMERGENCY PETITION FOR EXTENSION OF CONSUMMATION DATE
PENDENTE LITE

RICHARD R. WILSON, ESQ.
Attorney for Honey Creek Railroad, Inc.
Pa. I.D. #25661
127 Lexington Avenue, Suite 100
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(814) 944-5302
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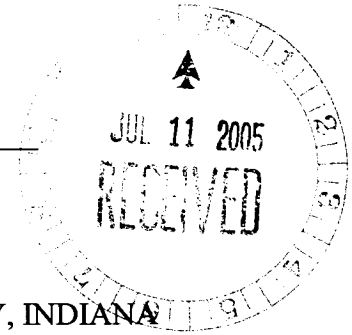
Dated: July 5, 2005



Before the
SURFACE TRANSPORTATION BOARD

DOCKET NO: AB 865-0-X

HONEY CREEK RAILROAD, INC. vs.
ABANDONMENT EXEMPTION – HENRY COUNTY, INDIANA



**EMERGENCY PETITION FOR EXTENSION OF CONSUMMATION DATE
*PENDENTE LITE***

Honey Creek Railroad, Inc. (“HCR”) files this Petition for Extension of Consummation Date *Pendente Lite* in connection with the abandonment authorization issued by the Surface Transportation Board (“STB”) on August 20, 2004 in the above captioned proceeding. For the reasons hereinafter set forth, HCR respectfully requests that the Board grant its Petition in order to preserve the current regulated status of the HCR line in light of litigation which HCR has been forced to undertake in order to protect the assets on its rail line.

On or before May 25, 2005, HCR local counsel William Keaton, Esq. learned that Mr. Gary Roberts, of Roberts Pipeline Construction Co., Inc., State Road 36 and CR 200 West, Sulfer Springs, IN, a land owner adjacent to the HCR line, had either intentionally or mistakenly removed and destroyed various tracks, rail materials, a switch, ties and ballasts from the HCR line without authorization or approval from HCR management. On June 10, 2005, Attorney John H. Brooke, on behalf of Mr. Roberts, wrote to Attorney Keaton and disputed the status of the HCR line as set forth in correspondence attached hereto as Exhibit A.

Subsequently, Attorney Keaton forwarded a copy of Attorney Brooke's letter to the undersigned and requested that a response be prepared to Attorney Brooke. Undersigned counsel prepared a letter dated June 17, 2005 (Exhibit B) clarifying the current status of the HCR abandonment proceeding, referring Attorney Brooke to the Board's pleading index for this proceeding and applicable regulations and case law, and confirmed that HCR had not consummated the Board's abandonment authority. Attorney Brooke was advised that the conduct of his client in destroying and removing rails and other track materials from the HCR right of way was contrary to law and that Mr. Roberts should take immediate steps to return the property removed from the HCR right of way and to cease and desist from all further trespass upon the right of way.

In the absence of an appropriate response from Mr. Roberts or his counsel, on June 22, 2005, Attorney Keaton filed an Appearance, Complaint and Demand for Jury Trial and a Notice for Injunctive Relief with the Henry County Circuit Court in New Castle, Indiana. On June 27, 2005, Attorney Keaton filed an Amended Complaint and related pleadings. Copies of these pleadings are attached as Exhibit C.

The unauthorized removal and destruction of track materials undertaken by Mr. Roberts and the legal proceedings necessitated by his conduct have created a legal impediment to the HCR consummation of abandonment authorization under the Board's August 20, 2004 Order. Issues concerning the regulatory status of the HCR line raised in this litigation are likely to require referral to the Surface Transportation Board for an advisory ruling. Consummation of HCR's abandonment authority on or before August 20, 2005 in the midst of this litigation could create legal questions concerning the Board's continuing jurisdiction over the HCR railroad right of way and track materials and unnecessarily complicate vindication of HCR's property interests before the Circuit Court

of Henry County, Indiana. Accordingly, proper resolution of the issues before the court require the preservation of the status quo with respect to the Board's regulatory jurisdiction over this rail line.

As indicted in the attached exhibits, HCR has not yet fully consummated its abandonment authorization for the HCR line by filing a Notice of Consummation with the Board. The Board therefore maintains exclusive regulatory jurisdiction over the HCR track and right of way under federal law. See Almono LP – Abandonment Exemption in Allegheny County, PA, STB Docket No. AB-842X January 28, 2004; Brit v. Surface Transportation Board, 90 F. 3d 580 (1996). Charles Barows, et al. v. Texas Mexican Railway Company, 400 F 3d 228, 205 U.S. App. Lexis 2004 195 (February 9, 2005); Hayfield Northern Railroad v. Chirogot N.W. Ry Co., 467 U.S. 622 (1984). Accordingly, the Board has regulatory authority to extend HCR's consummation date to preserve the status quo *pendente lite* and to avoid the administrative burden of a further abandonment application if its current authorization were to expire on August 20, 2005. Cf. CSX Transportation, Inc. – Abandonment Exemption – In Richmond County, CA, STB Docket No. AB-55 (Sub No. 614X) (June 29, 2005).

Accordingly, HCR respectfully requests that the Board grant an extension *pendente lite* of the August 20, 2005 consummation date so that the legal issues presented in the pending state court litigation can be properly resolved. The requested extension will not prejudice the rights of either party inasmuch as the actions complained of by HCR occurred prior to the August 20, 2005 consummation date originally established by the Board and the requested extension will afford both parties a fair and adequate opportunity to present their respective claims to the court.

VERIFICATION

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verification.

William E. Smith Pres.
William E. Smith

Dated: 6-28-05

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of July, 2005 served a copy of the Emergency Petition for Extension of Consummation Date *Pendente Lite* upon the following by first class United States Mail, postage prepaid:

William B. Keaton, Esq.
KEATON AND KEATON, P.C.
126 West Second Street
Rushville, IN 46173

John H. Brooke, Esq.
Brooke-Mawhorr Attorneys at Law
P.O. Box 1071
112 E. Gilbert Street
Muncie, Indiana 47308-1071

A handwritten signature in black ink, appearing to read "Richard R. Wilson", written over a horizontal line.

Richard R. Wilson, Esq.
Attorney for Honey Creek Railroad, Inc.

BROOKE ♦ MAWHORR

Attorneys At Law

John H. Brooke
Douglas K. Mawhorr

Leslie M. Horn

June 10, 2005

William Keaton
Keaton and Keaton, P. C.
126 West Second Street
Rushville, Indiana 46173

JUN 14 2005

Re: Gary Roberts / Honey Creek Railroad

Dear Mr. Keaton:

I have had an opportunity to review your May 25, 2005 correspondence with my client. My client strongly disputes the allegations that he has removed, destroyed rails and rail equipment belonging to your client. In your letter dated May 25, 2005 you failed to identify the interest in the real estate where these rails are located other than describing it was a "right-of-way".

Since a preliminary search of the property records indicates no easement or other proper legal title for the Honey Creek Railroad or its predecessors, my client owns the real estate and owns all aspects of the real estate and improvements there on which have been abandoned. The Honey Creek rail line that crosses through my client's property was legally abandoned by the Surface Transportation Department of the United States Department of Transportation in August 2004. We have obtained the proper documentation from the Department of Transportation to verify the abandonment.

Furthermore the Norfolk and Southern Railroad has removed rails, ties and other aspects of the "Honey Creek Railroad property" making access to the Norfolk and Southern line impossible. My client puts no weight in the fact that the Honey Creek Railroad is "inactive" giving its legal and physical attributes which clearly indicate an abandonment.

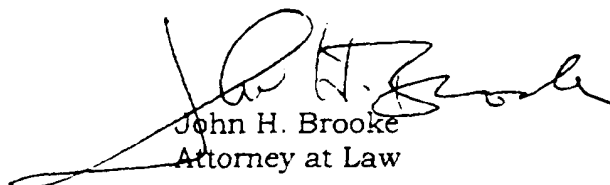
The Honey Creek Railroad has done nothing to operate its railroad for the past several years and there is no ability to operate the railroad in the future since it has been abandoned.

William Keaton
Keaton and Keaton, P. C.
Page Two
June 10, 2005

My client therefore has a right to use his property without interference from the Honey Creek Railroad. If there are any other questions please don't hesitate to contact me. Please be advised that this office will not accept service of process for any of the defendants herein.

Sincerely,

BROOKE ♦ MAWHORR, PC



John H. Brooke
Attorney at Law

JHB/llr

RICHARD R. WILSON, P.C.

Attorney at Law

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June 17, 2005

John H. Brooke, Esq.
Brooke-Mawhorr
P.O. Box 1071
112 East Gilbert St.
Muncy, IN 47308-1071

SENT VIA FACSIMILE – 765-288-7763

Re: Honey Creek Railroad Abandonment Status

Dear Mr. Brooke:

I am in receipt of your letter of June 10, 2005 to Attorney William Keaton. I am the attorney who represented Honey Creek Railroad in connection with its abandonment application before the Surface Transportation Board. I have been advised that your client, Gary Roberts, has destroyed and removed rails and other track materials from the Honey Creek Railroad right of way under the belief that this railroad right of way has been fully abandoned and that portions of this right of way adjacent to his property and all improvements thereon have reverted to him. I have also reviewed the assertions set forth in your letter of June 10, 2005 and I wish to inform you and your client that your legal analysis and understanding of the facts regarding this railroad right of way are seriously in error.

As you will note from the enclosed pleading index for the Honey Creek Railroad Abandonment in AB-865-0-X which is publicly available on the Surface Transportation Board website, the Honey Creek Railroad filed a Notice of Exemption to obtain abandonment authority from the Surface Transportation Board on August 2, 2004. On August 20, 2004, the Surface Transportation Board issued a Notice of Exemption authorizing Honey Creek Railroad to abandon its entire 5.9 mile line of railroad between Sulphur Springs and New Castle, Indiana in Henry County, Indiana (copy attached). However, if you will note carefully on Page 3 of that decision, Honey Creek Railroad was directed to file a Notice of Consummation with the Board to signify when it had exercised the authority granted by the Board and fully abandoned the line in accordance with 49 C.F.R. §1152.29(e)(2). Furthermore, on September 16, 2004 the Board issued a supplemental order imposing a Notice of Interim Trail Use with respect to this rail line and further conditioning its abandonment authority on compliance with certain environmental

Page Two
June 17, 2005

conditions related to removal of track at certain locations along the rail line (copy attached). As you can see from the pleadings index, Honey Creek Railroad Company has yet to file a Notice of Consummation with the Surface Transportation Board for this rail line in accordance with 49 C.F.R. §1152.29(e)(2) and accordingly, the 5.9 mile rail line of Honey Creek Railroad has not yet been abandoned under the Board's August 20, 2004 authorization order.

Both administrative and judicial decisions confirm that when a carrier is authorized to abandon a rail line, that authority is permissive, not mandatory. Thus, until the carrier exercises abandonment authority it has received under the provisions of 49 C.F.R. §1152.29(e)(2), the rail line is not abandoned and the Board's primary jurisdiction over the rail line continues. Thus, federal law controls the status of the rail line as a nonabandoned rail facility and the application of state personal and real property law with respect to the rail line is preempted. See Almono LP - Abandonment Exemption in Allegheny County, PA, STB Docket No. AB-842X January 28, 2004; Brit v. Surface Transportation Board, 90 F.3d 580 (1996). Charles Barows, et al. v. Texas Mexican Railway Company, 400 F.3d 228, 205 U.S. App. Lexis 2004 195 (February 9, 2005).

Accordingly, your client has no authority whatsoever to trespass upon the Honey Creek Railroad Company right of way or to remove any personal property including rails, ties, ballast or other rail facilities which are the sole and exclusive property of Honey Creek Railroad Company. I strongly suggest that you counsel your client to return any property which he has taken and/or removed from the Honey Creek Railroad right of way and to cease and desist from all further trespass upon the Honey Creek Railroad right of way.

Thank you for your immediate attention to this matter. If you have any further questions in this regard, please contact me.

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.
Attorney for Honey Creek Railroad Co.

/39614

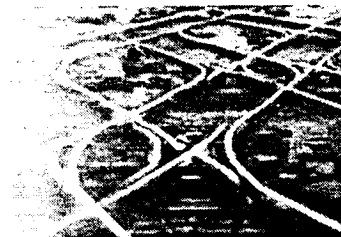
RRW/bab

Enclosures

xc: William B. Keaton, Esq. (by facsimile 765-938-2803)
William E. Smith (by facsimile 765-938-5558)



Surface Transportation Board



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09/07/2004		AB 865	0 X Indiana Trails Fund Inc	TRAIL USE REQUEST	<u>211953</u>
09/01/2004		AB 865	0 X Honey Creek Railroad Inc	REPLY	<u>211927</u>
08/13/2004		AB 865	0 X Honey Creek Railroad Inc	CERTIFICATE OF PUBLICATION	<u>211802</u>
08/04/2004		AB 865	0 X Honey Creek Railroad Inc	AMEND/MODIFY/SUPPLEMENT PRIOR FILING OR THE RECORD	<u>211735</u>
08/03/2004		AB 865	0 X Honey Creek Railroad Inc	CERTIFICATE OF PUBLICATION	<u>211745</u>
08/02/2004		AB 865	0 X Honey Creek Railroad Inc	NOTICE OF EXEMPTION	<u>211701</u>
05/24/2004		AB 865	0 X Honey Creek Railroad Inc	ENVIRONMENTAL MATERIALS	<u>211066</u>



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SURFACE TRANSPORTATION BOARD DECISION DOCUMENT
Decision Information

Docket Number: **AB_865_0_X**

Case Title: **HONEY CREEK RAILROAD, INC.--ABANDONMENT EXEMPTION-- IN HENRY COUNTY, IN**

Decision Type: **Notice**

Deciding Body: **Director Of Proceedings**

Decision Summary

Decision Notes: **NOTICE THAT HCR HAS FILED A NOTICE OF EXEMPTION TO ABANDON ITS ENTIRE APPROXIMATELY 5.9-MILE LINE OF RAILROAD, BETWEEN SULPHUR SPRINGS AND NEW CASTLE, IN HENRY COUNTY, IN.**

Full Text of Decision

34964 SERVICE DATE - AUGUST 20, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-865X]

Honey Creek Railroad, Inc.--Abandonment Exemption--in Henry County, IN

The Honey Creek Railroad, Inc. (HCR) has filed a notice of exemption under

49 CFR 1152 Subpart F--Exempt Abandonments to abandon its entire approximately 5.9-mile line of railroad, between Sulphur Springs and New Castle, in Henry County, IN. ☞ The line traverses United States Postal Service Zip Code 47362.

HCR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (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 Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. 10502(g), unless the evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See *Wellsville, Addison & Galetton R. Corp.—Abandonment*, 354 I.C.C. 744 (1978); and *Northampton and Bath R. Co.—Abandonment*, 354 I.C.C. 784 (1978). Because HCR does not appear to have a corporate affiliate or parent that will continue similar operations or that could benefit from the proposed abandonment, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 21, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues, ☞ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), ☞ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 30, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 9, 2004, with: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to the HCR's representative: Richard R. Wilson, 127 Lexington Avenue, Suite 100, Altoona, PA 16601.

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

HCR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 27, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface

Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), HCR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by HCR's filing of a notice of consummation by August 20, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

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

Decided: August 16, 2004.

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

Vernon A. Williams

Secretary

Decision Attachments

34964.wpd
34964.pdf

11 KB
11 KB

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SERVICE DATE - SEPTEMBER 20, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-865X

HONEY CREEK RAILROAD, INC.-ABANDONMENT EXEMPTION-
IN HENRY COUNTY, IN

Decided: September 16, 2004

The Honey Creek Railroad, Inc. (HCR) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon its entire approximately 5.9-mile line of railroad, between Sulphur Springs and New Castle, in Henry County, IN.¹ Notice of the exemption was served and published in the Federal Register on August 20, 2004 (69 FR 51751). The exemption is scheduled to become effective on September 21, 2004.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 27, 2004. In the EA, SEA states that the U.S. Environmental Protection Agency (EPA), Region 5, has expressed concerns regarding HCR's the removal and salvage methods to be used by HCR during abandonment activities, the final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills from construction equipment, bridge and culvert maintenance, and erosion mitigation practices to be used during abandonment activities. Specific mitigation measures suggested by EPA include: using existing public and private crossings when removing materials, particularly in wooded areas and areas adjacent to wetlands; restoring disturbed soil to original grade; and reseeded disturbed areas with native flora. Therefore, SEA recommends that, prior to commencement of any salvage activities, HCR be required to consult with EPA, Region 5, regarding removal and salvage methods, final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills from construction equipment, bridge and culvert maintenance, and erosion mitigation practices that to be used during abandonment activities. SEA also recommends that HCR use existing public and private crossings when removing materials, particularly in wooded areas and areas adjacent to wetlands, restore disturbed soil to original grade, and reseed disturbed areas with native flora.

¹ HCR acquired the line in Honey Creek Railroad, Inc.-Acquisition and Operation Exemption-Line of Consolidated Rail Corporation, Finance Docket No. 32332 (ICC served Sept. 20, 1993). There, it was specified that the line runs between Consolidated Rail Corporation's milepost 104.1 and milepost 110.05. HCR states that these designations were not utilized by it in connection with HCR's rail operations.

STB Docket No. AB-865X

SEA also states that the Indiana Department of National Resources (DNR) has advised that formal approval by DNR under the regulatory programs administered by the Division of Water is not required for this abandonment. However, DNR states that any work proposed on the bridge over Bell Creek may require prior approval from DNR under the Flood Control Act, unless the work qualifies for an exemption. Therefore, SEA recommends that HCR consult with DNR to determine if any permits are required prior to undertaking any salvage activities that would impact Bell Creek.

Comments to the EA were due by September 13, 2004. No comments were received. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

On September 7, 2004,² the Indiana Trails Fund, Inc. (ITF) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, to negotiate with HCR for acquisition of the right-of-way (ROW). ITF has submitted a statement of willingness to assume financial responsibility for the 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 payment of any and all taxes that may be levied or assessed against, the ROW, as required at 49 CFR 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. In a response submitted on September 1, 2004, HCR states that it agrees to the issuance of a NITU.

Because ITF's request complies with the requirements of 49 CFR 1152.29 and HCR is willing to negotiate for trail use, a NITU will be issued for the subject line. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, HCR may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in the EA that the ROW may be suitable for other public use following abandonment. As noted above, ITF has also requested a 180-day public use condition to negotiate with HCR for use of the ROW as a recreational trail. ITF requests that HCR be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms, and that HCR be barred from removing or destroying potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day

² Although the NITU and public use requests were submitted to the Board on August 25, 2004, and simultaneously filed with HCR on that same date, the requests were not considered filed until the filing fee was received on September 7, 2004.

STB Docket No. AB-865X

period from the effective date of the abandonment exemption. ITF states that the time period is needed to conduct negotiations with HCR.

The Board has determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). When the need for both conditions is established, it is the Board's policy to impose them concurrently, subject to the execution of a trail use agreement. The City has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the period of time requested. Accordingly, a 180-day public use condition will be imposed commencing with the effective date of the exemption. If a trail use agreement is reached on a portion of the ROW, HCR must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, HCR is not required to deal exclusively with ITF, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on August 20, 2004, exempting the abandonment of the line is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations, as set forth below, for a period of 180 days commencing from the September 21, 2004 effective date of the exemption (until March 20, 2005), and subject to the conditions that HCR shall: (1) (a) prior to commencement of any salvage activities, consult with EPA, Region 5, regarding removal and salvage methods, final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills from construction equipment, bridge and culvert maintenance, and erosion mitigation practices to be used during abandonment activities, and (b) use existing public and private crossing when removing materials, particularly in wooded areas and areas adjacent to wetlands, restore disturbed soil to original grade, and reseed disturbed areas with native flora; and (2) consult with DNR to determine if any permits are required prior to undertaking any salvage activities that would impact Bell Creek.

STB Docket No. AB-865X

3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, HCR may discontinue service and salvage track and related materials. HCR shall keep intact the ROW, including bridges, trestles, culverts and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before March 20, 2005, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

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 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 ROW.

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 ROW.

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 specified date.

7. If an agreement for interim trail use/rail banking is reached by March 20, 2005, interim trail use may be implemented. If no agreement is reached by that time, HCR may fully abandon the line, provided the conditions imposed in this proceeding are met.

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

STATE OF INDIANA,)
) SS: IN THE CIRCUIT/SUPERIOR COURT OF HENRY COUNTY
COUNTY OF HENRY,)

NO. 33C01-0506 CT0019

HONEY CREEK RAILROAD, INC.,)
an Indiana Corporation,)
Plaintiff,)
VS.)
GARY L. ROBERTS,)
Defendant,)

FILED

JUN 20 2005

John H. French
CLERK HENRY CIRCUIT COURT

APPEARANCE

Comes now Keaton and Keaton, P.C., by William B. Keaton, and enters his appearance on behalf of Honey Creek Railroad, Inc. in this cause.

1. Initiating Party: Honey Creek Railroad, Inc.
2. Attorney for Initiating Party: William B. Keaton, #5102-70
Keaton and Keaton, P.C.
126 West Second Street
Rushville, IN 46173
Telephone: (765)932-3947
FAX: (765)938-2803
3. Type of Proceeding: CT Complaint for Conversion and Permanent Injunction
4. Keaton and Keaton, P.C. will NOT accept service by FAX.

KEATON AND KEATON, P.C.

By *William B. Keaton*
William B. Keaton, #5102-70
Attorney for Plaintiff

KEATON AND KEATON, P.C.
126 West Second Street
Rushville, Indiana 46173
Telephone: (765)932-3947
HoneyCreekAppear.jun/vlm

STATE OF INDIANA,)
) SS: IN THE CIRCUIT/SUPERIOR COURT OF HENRY COUNTY
COUNTY OF HENRY,)

NO. 33C01-0506 CT0019

HONEY CREEK RAILROAD, INC.,)
an Indiana Corporation,)

Plaintiff,)

VS.)

GARY L. ROBERTS,)

Defendant,)

FILED

JUN 20 2005

William E. Smith
CLERK HENRY CIRCUIT COURT

VERIFIED COMPLAINT

Comes now Honey Creek Railroad, Inc. (hereinafter referred to as "Honey Creek") by its President, William E. Smith, and for the Verified Complaint of Honey Creek against Gary L. Roberts (hereinafter referred to as "Roberts") would show the Court as follows:

General Allegations

1. Honey Creek is a corporation organized pursuant to the laws of the State of Indiana.
2. Honey Creek is in good standing with the office of the Secretary of State of the State of Indiana.
3. Honey Creek is the owner of a railroad located in Henry County, Indiana, consisting of the right of use of certain property, a railroad bed, railroad ties, spikes, rails and switches (hereinafter referred to as "railroad").
4. Honey Creek has the sole right to the use and possession of the railroad.
5. Honey Creek is the owner of the personal property consisting of the rails, switches, spikes, ties and material making up the railroad bed.
6. Roberts is believed to own property adjoining the railroad in Henry County, Indiana.

7. Roberts has removed and destroyed rails, ties, spikes and severely damaged the railroad bed owned by Honey Creek.
8. Roberts has cut up and destroyed number one relay rails owned by Honey Creek, tremendously reducing their value from number one relay rail to scrap iron.
9. Roberts has cut up and destroyed a railroad switch owned by Honey Creek.
10. Roberts continues to threaten to destroy additional property of Honey Creek.
11. Roberts is believed to be in the process of and attempting to sell the property of Honey Creek.

I.

Request For Emergency Preliminary Injunction

12. An emergency preliminary injunction should be entered pursuant to Trial Rule 65(A)(1) enjoining Roberts from damaging any additional portions of the railroad and enjoining him from disposing of any of the property which he has removed from the railroad.
13. Roberts is represented by John H. Brooke, Esq., P. O. Box 1071, Muncie, Indiana 47308-1071, and a copy of this Complaint has been sent to him by facsimile to provide notice of our request for an emergency preliminary injunction.
14. Unless an immediate emergency hearing is held, irreparable injury, loss or damage will result to Honey Creek as the result of Roberts' continued destruction of Honey Creek's railroad.

WHEREFORE, Honey Creek prays the Court to set this matter on an emergency basis for hearing on a preliminary injunction, to issue a preliminary injunction enjoining Roberts from continuing to destroy Honey Creek's property and from disposing of any property that has already been removed from the railroad pending a determination of the issues in this case and for all other relief proper in the premises.

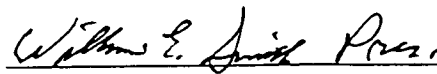
III.
Conversion

Comes now Honey Creek Railroad, Inc. by its President, William E. Smith, and for its Complaint against Gary L. Roberts for Conversion would show as follows:

17. Honey Creek incorporates by reference rhetorical paragraphs 1 through 11 of the General Allegations as though fully set forth herein.
18. Roberts removed and destroyed for his own gain property of Honey Creek resulting in a pecuniary loss to Honey Creek.
19. Roberts knowingly or intentionally exerted unauthorized control over the property of Honey Creek.
20. Roberts' actions constitute a violation of Ind. Code § 35-43-4-3.
21. As the direct result of Roberts' actions and violation of I.C. § 35-43-4-3, Honey Creek has suffered a pecuniary loss which is estimated to be in significantly excess of One Hundred Thousand Dollars (\$100,000.00) and continues to increase due to Roberts' continued destruction of the railroad.
22. Honey Creek is entitled to recover all of the damages set forth in I.C. § 34-24-3-1 including, but not limited to, an amount up to three (3) times the actual damages, the costs of the action, reasonable attorney fees, actual expenses incurred in bringing this action and all other costs and damages set forth in said statute.

WHEREFORE, Honey Creek prays the Court or jury to grant judgment in favor of Honey Creek on its Complaint for Conversion for three (3) times the pecuniary loss suffered by Honey Creek; to grant Honey Creek the additional damages provided by statute; for reasonable attorney fees and expenses and for all other relief proper in the premises.

I affirm under the penalties for perjury that the foregoing statements are true and correct to the best of my knowledge and belief.


William E. Smith, President
Honey Creek Railroad, Inc.

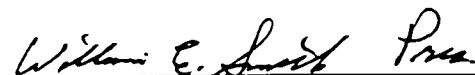
II.
Complaint For Permanent Injunction

Comes now Honey Creek Railroad, Inc. by its President, William E. Smith, and for its Complaint For Permanent Injunction against Gary L. Roberts would show as follows:

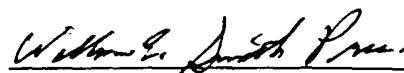
15. Honey Creek incorporates by reference rhetorical paragraphs 1 through 11 of the General Allegations and rhetorical paragraphs 12 through 14 of Legal Paragraph I of the Complaint.
16. A permanent injunction should be entered to enjoin Roberts from engaging in any future conduct to damage, destroy or in any way exercise unauthorized control over the property of Honey Creek's railroad.

WHEREFORE, Honey Creek prays for a permanent injunction as requested herein and for all other relief proper in the premises.

I affirm under the penalties for perjury that the foregoing statements are true and correct to the best of my knowledge and belief.


William E. Smith, President
Honey Creek Railroad, Inc.

I affirm under the penalties for perjury that the foregoing statements are true and correct to the best of my knowledge and belief.



William E. Smith, President
Honey Creek Railroad, Inc.

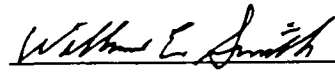
IV.
Mischief

23. Honey Creek incorporates by reference rhetorical paragraphs 1 through 11 of the General Allegations and paragraphs 17 through 23 of Legal Paragraph III as though fully set forth herein.
24. Roberts recklessly, knowingly, or intentionally damaged or defaced the property of Honey Creek without Honey Creek's consent.
25. The pecuniary loss was in excess of One Hundred Thousand Dollars (\$100,000.00).
26. Roberts' acts are a violation of Ind. Code § 35-43-1-2.
27. As the direct result of Roberts' actions and violation of I.C. § 35-43-1-2, Honey Creek has suffered a pecuniary loss which is estimated to be in significantly excess of One Hundred Thousand Dollars (\$100,000.00) and continues to increase due to Roberts' continued destruction of the railroad.
28. Honey Creek is entitled to recover all of the damages set forth in I.C. § 34-24-3-1 including, but not limited to, an amount up to three (3) times the actual damages, the costs of the action, reasonable attorney fees, actual expenses incurred in bringing this action and all other costs and damages set forth in said statute.

WHEREFORE, Honey Creek prays the Court or jury to grant judgment in favor of Honey Creek on its Complaint for Conversion for three (3) times the pecuniary loss suffered by Honey

Creek; to grant Honey Creek the additional damages provided by statute; for reasonable attorney fees and expenses and for all other relief proper in the premises.

I affirm under the penalties for perjury that the foregoing statements are true and correct to the best of my knowledge and belief.



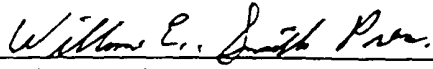
William E. Smith, President
Honey Creek Railroad, Inc.

V.
Damages

29. Honey Creek incorporates by reference rhetorical paragraphs 1 through 11 of the General Allegations, paragraphs 17 through 23 of legal paragraph III and paragraphs 23 through 24 of Legal Paragraph IV as though fully set forth herein.
30. Roberts negligently and without authority damaged the railroad of Honey Creek.
31. Honey Creek demanded that Roberts cease and desist in his damage to Honey Creek's railroad, but he refused to do so.
32. Honey Creek is without fault.
33. As the direct and proximate result of the negligent acts of the defendant, Honey Creek has been damaged. The amount of the damage has not yet been determined, but it is believed to be far in excess of One Hundred Thousand Dollars (\$100,000.00).

WHEREFORE, Honey Creek prays the Court or jury to grant judgment in favor of Honey Creek on its Complaint for Damages; and for all other relief proper in the premises.

I affirm under the penalties for perjury that the foregoing statements are true and correct to the best of my knowledge and belief.



William E. Smith, President
Honey Creek Railroad, Inc.



William B. Keaton, #5102-70
Attorney for Honey Creek Railroad, Inc.

KEATON AND KEATON, P.C.
126 West Second Street
Rushville, Indiana 46173
Telephone: (765)932-3947
Fax: (765) 938-2803

STATE OF INDIANA,)
)SS: IN THE CIRCUIT/SUPERIOR COURT OF HENRY COUNTY
COUNTY OF HENRY,)

NO. 33001-0506 CT 0019

HONEY CREEK RAILROAD, INC.,)
an Indiana Corporation,)
 Plaintiff,)
 VS.)
)
GARY L. ROBERTS,)
 Defendant,)

FILED

JUN 20 2005

John H. Hunt
CLERK HENRY CIRCUIT COURT

DEMAND FOR JURY TRIAL
ON LEGAL PARAGRAPH III, IV And V

Comes now the plaintiff, Honey Creek Railroad, Inc., by counsel, William B. Keaton, and hereby requests a trial by jury on Legal Paragraphs III, IV and V of the Complaint in this cause.

WHEREFORE, William B. Keaton prays the Court for a trial by jury on Legal Paragraphs III, IV and V of the Complaint in this cause and for all other relief proper in the premises.

KEATON AND KEATON, P.C.

By *William B. Keaton*
William B. Keaton, #5102-70
Attorney for Plaintiff

KEATON AND KEATON, P.C.
126 West Second Street
Rushville, Indiana 46173
Telephone: (765)932-3947

HoneyCreekJury.jun\rim

STATE OF INDIANA,)
) SS: IN THE CIRCUIT/SUPERIOR COURT OF HENRY COUNTY
COUNTY OF HENRY,)

NO. 33C01-0506 CT0019

HONEY CREEK RAILROAD, INC.,)
an Indiana Corporation,)
Plaintiff,)
VS.)
GARY L. ROBERTS,)
Defendant,)

FILED

JUN 20 2005

Stephen H. Smith
CLERK HENRY CIRCUIT COURT

NOTICE OF HEARING ON REQUEST
FOR IMMEDIATE PRELIMINARY INJUNCTION

Notice is hereby given that a hearing will be conducted in this cause on the 19 day of
July, 2005, at 2:00 o'clock p.m. on plaintiff's request for an
immediate preliminary injunction.

This hearing will take approximately two (2) hours.

ALL OF WHICH IS ORDERED this 20 day of June, 2005.

Mr. [Signature]
Judge, Henry Superior/Circuit Court

DISTRIBUTION:
William B. Keaton
Fax: (765) 938-2803

John H. Brooke
P. O. Box 1071
Muncie, Indiana 47308-1071
Fax: (765) 288-7763

Personal Service by Henry County
Sheriff on:
Gary L. Roberts
Roberts Pipeline Construction Co., Inc.
State Road 36 and CR 200 West
Sulphur Springs, Indiana 47338

STATE OF INDIANA,)
) SS: IN THE CIRCUIT/SUPERIOR COURT OF HENRY COUNTY
 COUNTY OF HENRY,)

NO. 33CO1-0506-CT-0019

HONEY CREEK RAILROAD, INC.,)
 an Indiana Corporation,)

Plaintiff,)

VS.)

GARY L. ROBERTS,)
 Individually,)

ROBERTS PIPELINE CONSTRUCTION)
 COMPANY, INC.,)
 An Indiana Corporation,)

ROBERTS CONSTRUCTION, INC.,)
 An Indiana Corporation,)

Defendants,)

FILED

JUN 27 2005

CB

William B. Keaton
 CLERK HENRY CIRCUIT COURT

AMENDED VERIFIED COMPLAINT

Comes now Honey Creek Railroad, Inc. (hereinafter referred to as "Honey Creek") by its President, William E. Smith, and for the Amended Verified Complaint of Honey Creek against Gary L. Roberts, individually (hereinafter referred to as "Roberts"), Roberts Pipeline Construction Company, Inc. an Indiana Corporation (herein after referred to as "Roberts Pipeline"), and Roberts Construction, Inc. (hereinafter referred to as "Roberts Construction") would show the Court as follows:

General Allegations

1. Honey Creek is a corporation organized pursuant to the laws of the State of Indiana.

2. Honey Creek is in good standing with the office of the Secretary of State of the State of Indiana.
3. Honey Creek is the owner of a railroad located in Henry County, Indiana, consisting of the right of use of certain property, a railroad bed, railroad ties, spikes, rails and switches (hereinafter referred to as "railroad").
4. Honey Creek has the sole right to the use and possession of the railroad.
5. Honey Creek is the owner of the personal property consisting of the rails, switches, spikes, ties and material making up the railroad bed.
6. Roberts Pipeline Construction Company, Inc. is an Indiana for-profit corporation with its principal office located at Sulphur Springs, Indiana.
7. Gary L. Roberts is the resident agent of Roberts Pipeline.
8. Roberts Construction, Inc. is an Indiana for-profit corporation with its principal office located at Sulphur Springs, Indiana.
9. Gary L. Roberts is the resident agent of Roberts Construction.
10. Gary L. Roberts is listed by the Indiana Secretary of State as the President and only principal of Roberts Pipeline and Roberts Construction.
11. Roberts and/or Roberts Construction and/or Roberts Pipeline are believed to own property adjoining the railroad in Henry County, Indiana.
12. Roberts, Roberts Pipeline and/or Roberts Construction have removed and destroyed rails, ties, spikes and severely damaged the railroad bed owned by Honey Creek.
13. Roberts, Roberts Pipeline and/or Roberts Construction have cut up and destroyed "number one relay rails" owned by Honey Creek, tremendously reducing their value from number one relay rail to scrap iron.
14. Roberts, Roberts Pipeline and/or Roberts Construction have cut up and destroyed a railroad switch owned by Honey Creek.

15. On June 16, 2005, trucks identified on the vehicles as Roberts Construction hauled away rails owned by Honey Creek.
16. Roberts, Roberts Pipeline and/or Roberts Construction continue to threaten to destroy additional property of Honey Creek.
17. Roberts, Roberts Pipeline and/or Roberts Construction have are believed to be in the process of and attempting to sell the property of Honey Creek.

I.

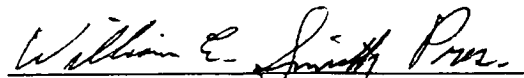
Request For Emergency Preliminary Injunction

Comes now Honey Creek Railroad, Inc. by its President, William E. Smith, and for its Complaint For Emergency Preliminary Injunction against Roberts, Roberts Pipeline and Roberts Construction would show as follows:

18. Honey Creek incorporates by reference rhetorical paragraphs 1 through 17 of the General Allegations as though fully set forth herein
19. An emergency preliminary injunction should be entered pursuant to Trial Rule 65(A)(1) enjoining Roberts, Roberts Pipeline and Roberts Construction from damaging any additional portions of the railroad and enjoining them from disposing of any of the property which they have removed from the railroad.
20. Roberts, Roberts Pipeline and Roberts Construction are represented by John H. Brooke, Esq., P. O. Box 1071, Muncie, Indiana 47308-1071, and a copy of this Amended Verified Complaint has been mailed to him to provide notice of our request for an emergency preliminary injunction.
21. Unless an immediate emergency hearing is held, irreparable injury, loss or damage will result to Honey Creek as the result of defendant's continued destruction of Honey Creek's railroad.

WHEREFORE, Honey Creek prays the Court to set this matter on an emergency basis for hearing on a preliminary injunction, to issue a preliminary injunction enjoining Roberts, Roberts Pipeline and Roberts Construction from continuing to destroy Honey Creek's property and from disposing of any property that has already been removed from the railroad pending a determination of the issues in this case and for all other relief proper in the premises.

I affirm under the penalties for perjury that the foregoing statements are true and correct to the best of my knowledge and belief.



William E. Smith, President
Honey Creek Railroad, Inc.

II.

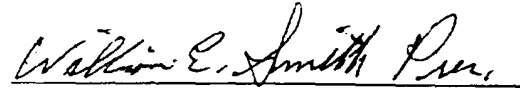
Complaint For Permanent Injunction

Comes now Honey Creek Railroad, Inc. by its President, William E. Smith, and for its Complaint For Permanent Injunction against Roberts, Roberts Pipeline and Roberts Construction would show as follows:

22. Honey Creek incorporates by reference rhetorical paragraphs 1 through 17 of the General Allegations and rhetorical paragraphs 19 through 21 of Legal Paragraph I of the Complaint.
23. A permanent injunction should be entered to enjoin Roberts, Roberts Pipeline and Roberts Construction from engaging in any future conduct to damage, destroy or in any way exercise unauthorized control over the property of Honey Creek's railroad.

WHEREFORE, Honey Creek prays for a permanent injunction against Roberts, Roberts Pipeline and Roberts Construction as requested herein and for all other relief proper in the premises.

I affirm under the penalties for perjury that the foregoing statements are true and correct to the best of my knowledge and belief.


William E. Smith, President
Honey Creek Railroad, Inc.

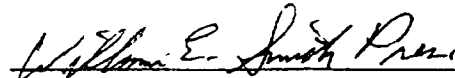
III.
Conversion

Comes now Honey Creek Railroad, Inc. by its President, William E. Smith, and for Legal Paragraph III of its complaint for conversion against Roberts, Roberts Pipeline and Roberts Construction would show as follows:

24. Honey Creek incorporates by reference rhetorical paragraphs 1 through 17 of the General Allegations as though fully set forth herein.
25. Roberts, Roberts Pipeline and Roberts Construction knowingly or intentionally removed and destroyed for his own gain property of Honey Creek resulting in a pecuniary loss to Honey Creek.
26. Roberts, Roberts Pipeline and Roberts Construction knowingly or intentionally exerted unauthorized control over the property of Honey Creek.
27. Defendants' actions constitute a violation of Ind. Code § 35-43-4-3.
28. As the direct result of defendants' actions and violation of I.C. § 35-43-4-3, Honey Creek has suffered a pecuniary loss which is in excess of One Hundred Thirty-one Thousand Dollars (\$131,000.00) and continues to increase due to the defendants' continued destruction of the railroad.
29. Honey Creek is entitled to recover all of the damages set forth in I.C. § 34-24-3-1 including, but not limited to, an amount up to three (3) times the actual damages, the costs of the action, reasonable attorney fees, actual expenses incurred in bringing this action and all other costs and damages set forth in said statute.

WHEREFORE, Honey Creek prays the Court or jury to grant judgment in favor of Honey Creek on its Complaint for Conversion for three (3) times the pecuniary loss suffered by Honey Creek; to grant Honey Creek the additional damages provided by statute; for reasonable attorney fees and expenses and for all other relief proper in the premises.

I affirm under the penalties for perjury that the foregoing statements are true and correct to the best of my knowledge and belief.



William E. Smith, President
Honey Creek Railroad, Inc.

IV.
Mischief

Comes now Honey Creek Railroad, Inc. by its President, William E. Smith, and for Legal Paragraph IV of its complaint for mischief against Roberts, Roberts Pipeline and Roberts Construction would show as follows:

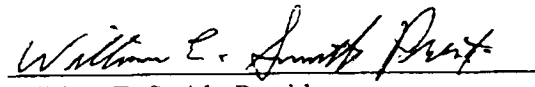
30. Honey Creek incorporates by reference rhetorical paragraphs 1 through 17 of the General Allegations as though fully set forth herein.
31. Roberts, Roberts Pipeline and Roberts Construction recklessly, knowingly, or intentionally damaged or defaced the property of Honey Creek without Honey Creek's consent.
32. The pecuniary loss is in excess of One Hundred Thirty-one Thousand Dollars (\$131,000.00).
33. Defendants' acts are a violation of Ind. Code § 35-43-1-2.
34. As the direct result of defendants' actions and violation of I.C. § 35-43-1-2, Honey Creek has suffered a pecuniary loss which is in excess of One Hundred Thirty-one Thousand Dollars

(\$131,000.00) and continues to increase due to defendants' continued destruction of the railroad.

35. Honey Creek is entitled to recover all of the damages set forth in I.C. § 34-24-3-1 including, but not limited to, an amount up to three (3) times the actual damages, the costs of the action, reasonable attorney fees, actual expenses incurred in bringing this action and all other costs and damages set forth in said statute.

WHEREFORE, Honey Creek prays the Court or jury to grant judgment in favor of Honey Creek on its Complaint for Conversion for three (3) times the pecuniary loss suffered by Honey Creek; to grant Honey Creek the additional damages provided by statute; for reasonable attorney fees and expenses and for all other relief proper in the premises.

I affirm under the penalties for perjury that the foregoing statements are true and correct to the best of my knowledge and belief.


William E. Smith, President
Honey Creek Railroad, Inc.

V.
Damages

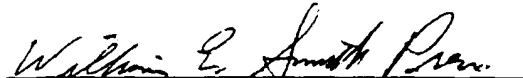
Comes now Honey Creek Railroad, Inc. by its President, William E. Smith, and for Legal Paragraph IV of its complaint for damages against Roberts, Roberts Pipeline and Roberts Construction would show as follows:

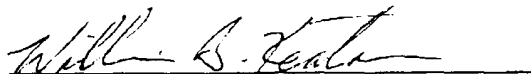
36. Honey Creek incorporates by reference rhetorical paragraphs 1 through 17 of the General Allegations as though fully set forth herein.

37. Roberts, Roberts Pipeline and Roberts Construction negligently and without authority damaged the railroad of Honey Creek.
38. Honey Creek demanded that Roberts, Roberts Pipeline and Roberts Construction cease and desist in their damage to Honey Creek's railroad, but they refused to do so and have sold or otherwise disposed of property owned by Honey Creek.
39. Honey Creek is without fault.
40. As the direct and proximate result of the negligent acts of the defendants, Honey Creek has been damaged. The amount of the damage has not yet been determined, but it is in excess of One Hundred Thirty-one Thousand Dollars (\$131,000.00).

WHEREFORE, Honey Creek prays the Court or jury to grant judgment in favor of Honey Creek on its Complaint for Damages; and for all other relief proper in the premises.

I affirm under the penalties for perjury that the foregoing statements are true and correct to the best of my knowledge and belief.


William E. Smith, President
Honey Creek Railroad, Inc.


William B. Keaton, #5102-70
Attorney for Honey Creek Railroad, Inc.

KEATON AND KEATON, P.C.
126 West Second Street
Rushville, Indiana 46173
Telephone: (765)932-3947
Fax: (765) 938-2803

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was personally served upon the person or persons listed below or was served by facsimile transmission and/or by United States Mail, postage prepaid and addressed to the person or persons listed below:

Mr. John H. Brooke
Brooke & Mawhorr, P.C.
P. O. Box 1071
Muncie, Indiana 47308-1071

Dated: June 27, 2005

By William B. Keaton
William B. Keaton

HoneyCreekAmendedComplaint.jun

WHEREFORE, HCR respectfully requests that the Board expeditiously grant an extension of its consummation filing date, *pendente lite*. HCR will promptly advise the Board upon the conclusion of its litigation so that the Board can designate a new filing deadline for HCR's Notice of Consummation.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 
Richard R. Wilson, Esq.
Attorney for Honey Creek Railroad, Inc.

RICHARD R. WILSON, P.C.
127 Lexington Avenue, Suite 100
Altoona, PA 16601
(814) 944-5302