

ACKERSON KAUFFMAN FEX

ATTORNEYS, PC

WASHINGTON, DC • PALO ALTO, CA

KATHLEEN C. KAUFFMAN
ADMITTED IN DC & IL
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July 21, 2006

Via Fax (202) 565-9004
and Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

217112



Re: STB Finance Docket No. 34869, Honey Creek Railroad, Inc. - Petition for Declaratory Order - Notice of Deposition and Production of Records to Non-Party Norfolk Southern Railway Company

Dear Sir:

Yesterday Richard Wilson, Esq., representing Honey Creek Railroad, Inc. in the above referenced matter, provided you with a copy of a letter from non-party Norfolk Southern Corporation which was addressed to me and in response to the Notice of Deposition and Production of Records our office had sent them. Attached to this letter is my response to Norfolk Southern's letter.

It might be helpful if you could advise the parties whether they should continue to copy the Board on our discovery correspondence. It is not a practice with which I am familiar. Most courts before which I practice prefer that submissions be limited to the briefs specified in the rules. However, I am happy to follow whatever practice the Board finds useful.

With respect to the deposition dates initially noticed for the end of next week, as expected, counsel for the deponents other than Norfolk Southern have asked that they be rescheduled. We are, of course, discussing agreeable dates.

ENTERED
Office of Proceedings

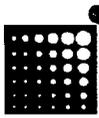
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Part of
Public Record

Sincerely,

Kathleen C. Kauffman

cc: counsel of record



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July 20, 2006

Via Fax (757) 533-4872
and U.S. Mail, First Class

James R. Paschall, Esq.
Senior General Attorney
Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, VA 23510-9241

Re: STB Finance Docket No. 34869, Honey Creek Railroad, Inc. - Petition for
Declaratory Order - Notice of Deposition and Production of Records to
Non-Party Norfolk Southern Railway Company

Dear Mr. Paschall:

Thank you for your prompt response to the July 14 notice. As you are aware, under STB regulations, we must obtain an STB subpoena for a non-party deposition only if the non-party rejects the notice. You have done so and we will obtain the subpoena.

Your objection is based solely on a presumption that Honey Creek will prevail on its interpretation of the law on the issue in dispute. It is Honey Creek's contention that its delay in filing a notice of consummation is dispositive both on the issue of whether and when an abandonment has occurred and on the issue of the STB's jurisdiction. Until the STB rules on the referred issue, Honey Creek's contention is just that: a contention. Norfolk Southern is a railroad and it is not surprising that it would want the issue of abandonment to turn on the filing of a letter solely within the control of the railroad. However, Roberts is a landowner through whose land runs a right of way that is abandoned under any and all commonsense understandings of what abandonment means. He has been sued in state court for treating an apparently abandoned right of way as abandoned. The issue is now before the STB and Roberts has a right to file his reply. The discovery requested is highly relevant to that reply. The issue will be fully briefed in the reply, but it is useful to note now that, as the STB stated in its enactment of the rule requiring notice of consummation:

James R. Paschall, Esq.
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“[N]otices [of consummation] that are filed would be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation. If no notice of consummation of abandonment has been filed, we would continue to look at the other facts and circumstances to determine if consummation of the abandonment had occurred.” 61 Fed. Reg. 11174-02, 11178, 1996 WL 116884 (Mar. 19, 1996); *see also* 1996 WL 734579, * 8 (Dec. 9, 1996) (final rules).

The limited deposition topics we specified and the documents we requested are highly relevant to the "other facts and circumstances" that the STB stated continue to be relevant even when no notice of consummation of abandonment has been filed. We will go forward with the subpoena. However, if you reconsider your position, we can discuss a convenient time and place for complying with the notice.

Sincerely,

Kathleen C. Kauffman / YG

Kathleen C. Kauffman

cc: counsel of record

