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WATERS, MCPHERSON, MCNEILL
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
300 LIGHTING WAY
P.O. Box 1560
SECAUCUS, NEW JERSEY 07096

ENTERED
Office of Proceedings
February 21, 2014
Part of
Public Record

OFFICE DIRECT DIAL: 201-330-7453
CELL and VOICE MAIL: 201-926-4402
E-MAIL dehorgan@lawwmm.com

DANIEL E. HORGAN
MEMBER OF N.J., N.Y. & D.C. BARS

February 21, 2014

Cynthia T. Brown
Chief, Section Of Administration
Surface Transportation Board
Office Of Proceedings
395 E St., SW, Room # 100
Washington, DC. 20423-0001

**Re: Consolidated Rail Corp.-Abandonment Exemption-Hudson County,
NJ, STB Docket: A.B. 167 (Sub- No. 1189X)**

Dear Ms. Brown:

We are E-Filing this letter concerning our Motion seeking intervention, which was filed on December 11, 2013. We represent 212 Marin Boulevard, LLC. and seven other named limited liability companies which hold fee title to the lands underlying some of the lines of rail which Conrail seeks to abandon, and we seek the Board's permission to intervene for the reasons expressed in the papers filed last December.

Since then the U.S. Court of Appeals has summarily affirmed a decision of the U.S. District Court for the District of Columbia finding that a portion of the line of rail sought to be abandoned by the pending Conrail petition was a line of rail in 1976 and was then subject to the Board's regulatory abandonment jurisdiction. We are providing you with a copy of the Court of Appeals Order with the E-Filing of this letter.

Our clients do not intend to seek further relief from the Court of Appeals and we now request that the Board proceed to grant our Motion for Intervention. Responses to that motion have been previously filed and no party has raised objection to our participation. Therefore, we respectfully request that we be granted Intervenor status in this matter. Thank you.

EXHIBIT

ORDER, USCA Case #13-7175, Document #1480538, Filed 02/19/2014, 2 Pages

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

BY: 
DANIEL E. HORGAN

CERTIFICATE OF SERVICE

I, Daniel E. Horgan, an attorney-at-law of New Jersey, New York, and the District of Columbia, hereby certify that on December 11, 2013, I caused service of this filing with the Surface Transportation Board to be made upon the Board by Electronic Filing and that all parties on the following service list were served by First Class Mail in accordance with the provisions of 49 C.F.R. §1104.12.

DATED: February 21, 2014

S/ Daniel E. Horgan
Daniel E. Horgan

SERVICE LIST

Counsel for Jersey City, Coalition, RTC:
Charles H. Montange (E-Filing/E-Mail service by prior consent)
426 NW 162nd Street
Seattle, WA 98177

Counsel for Rails to Trails Conservancy (RTC)
Andrea Ferster, Esq.
General Counsel
2121 Ward Court NW, 5th floor
Washington, D.C. 20037

Counsel for Conrail:

Robert M. Jenkins, III, Esq. (E-Filing/E-Mail service by prior consent)
Mayer Brown LLP
1999 K Street, NW
Washington, D.C. 20006-1101

Former Counsel for LLCs

Fritz Kahn, Esq.
1920 N Street, NW
8th Floor
Washington, D.C. 20036-1601

And the following self-represented individuals or entities:

Robert Martin
Daniel D. Saunders
NJ Department of Environmental Protection
State Historic Preservation Office
P.O. Box 420
Trenton, NJ 08625-0420

Massiel Ferrara, Director
Hudson County Planning Division
595 County Avenue
Bldg. 1, Second Floor
Secaucus, NJ 07094

Ron Emrich
Executive Director
Preservation New Jersey
310 W. State Street
Trenton, NJ 08618

Michael D. Selender
Vice President
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303-0068

Eric Fleming
President
Harsimus Cove Association
344 Gove Street
P.O. Box 101
Jersey City, NJ 07302

Jennifer Greely
President
Hamilton Park Neighborhood Assoc.
22 West Hamilton Place
Jersey City, NJ 07302

Jill Edelman
President
Powerhouse Arts District Nbd Ass'n
140 Bay Street, Unit 6J
Jersey City, NJ 07302

Robert Crown
President
The Village Nbd. Ass'n
360 Second Street
Jersey City, NJ 07302

Dan Webber
Vice President
Van Vorst Park Association
289 Varick Street
Jersey City, NJ 07302

Gretchen Scheiman
President
Historic Paulus Hook Ass'n
121 Grand Street
Jersey City, NJ 07302

Robert Vivien
President
Newport Nbd Ass'n
ADDRESS UNKNOWN

Delores P. Newman
NJ Committee for the East
Coast Greenway
ADDRESS UNKNOWN

Gregory A. Remaud
Conservation Director
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Sam Pesin
President
Friends of Liberty State Park
75 Liberty Avenue
Box 135
Jersey City, NJ 07306

Daniel H. Frohwirth
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303

Valerio Luccio
Civic JC
ADDRESS UNKNOWN

Eric S. Strohmeier
Vice President, COO
CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13-7175**September Term, 2013****1:09-cv-01900-ABJ****Filed On:** February 19, 2014

City of Jersey City, et al.,

Appellees

v.

Consolidated Rail Corporation and Paula T.
Dow, Acting Attorney General of the State of
New Jersey,

Appellees

212 Marin Boulevard, LLC, et al.,

Appellants

BEFORE: Tatel, Brown, and Millett, Circuit Judges**ORDER**

Upon consideration of the motion for summary affirmance and the supporting response thereto, appellants' opposition, and the replies, it is

ORDERED that the motion be granted, and the district court's order filed September 30, 2013, be summarily affirmed. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court did not abuse its discretion in denying appellants' motion for leave to file an amended answer, because the amendment was untimely (requested three years after the complaint was filed and on the eve of final resolution of the case); amendment would substantially alter the nature and scope of the litigation by introducing entirely new legal theories and disputes; and allowing amendment at this late juncture would unduly prejudice the other parties by unjustifiably delaying resolution of the action. See Williamsburg Wax Museum, Inc. v. Historic Figures, Inc., 810 F.2d 243, 247-48 (D.C. Cir. 1987) (denial of motion to amend based on delay, injection of new issues, and prejudice to opposing parties was within the district court's discretion). As appellants acknowledged in district court, the proffered claims presented entirely new legal theories and many new facts, extending beyond the dispute presented by the original complaint. In addition, denial of

United States Court of Appeals
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No. 13-7175**September Term, 2013**

the motion to amend will not unduly prejudice appellants because they remain free to press their new claims in independent litigation (subject to any relevant defenses or procedural barriers).

Furthermore, the district court properly granted summary judgment for the plaintiffs, based on its ruling that the portion of the Harsimus Branch at issue (running from the former railroad control point of CP Waldo to Marin Boulevard) was conveyed to the Consolidated Rail Corporation as part of the rail carrier's railroad lines, subject to the jurisdiction of the Surface Transportation Board to authorize abandonment of that railroad line. No. 09cv1900, 2013 WL 5423964 (D.D.C. Sept. 30, 2013); see 49 U.S.C. § 10903(a); Consol. Rail Corp. v. STB, 571 F.3d 13, 18-20 (D.C. Cir. 2009).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/
Timothy A. Ralls
Deputy Clerk