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MAR 6 2012

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. AB-1071**

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**STEWARTSTOWN RAILROAD COMPANY  
ADVERSE ABANDONMENT  
IN YORK COUNTY, PENNSYLVANIA**

**ENTERED  
Office of Proceedings**

**MAR 6 - 2012**

**Part of  
Public Record**

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**REPLY TO**

**STEWARTSTOWN RAILROAD'S FEBRUARY 27, 2012 LETTER AND  
THE ESTATE OF GEORGE HART'S MARCH 2, 2012 LETTER  
REGARDING INTERIM TRAIL USE / RAIL BANKING**

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1. James Riffin ("Riffin"), a party of record in this proceeding, herewith replies to the Stewartstown Railroad Company's ("SRC") February 27, 2012 Letter regarding interim trail use / rail banking and the Estate of George M. Hart's March 2, 2012 Response to the SRC's February 27, 2012 interim trail use / rail banking letter.

2. In SRC's February 27, 2012 Letter, SRC advised the Board that SRC agrees to negotiate interim trail use / rail banking with the York County Rail Trail Authority. In its March 2, 2012 letter, the Estate of George Hart ("Estate") advised the Board that it had previously (on September 6, 2011) informed the Board that "the Estate has no objection to efforts to acquire possession of the SRC Line via the Board-administered interim trail use provisions."

3. Riffin finds it to be outrageously inconsistent for the SRC and the Estate to argue that the time for filing Riffin's OFA had passed, while stating in their most recent letters that they are amenable to an interim trail use agreement.

4. Pursuant to 49 CFR 1152.26(a), the due date for filing public use and trail use requests was on Day 45 following the date the Application was filed (on July 7, 2011). Day 45 would be August 21, 2011, a Sunday.

5. In a decision served on July 27, 2011, the Board stated:

“The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such an application. Accordingly, **any request for a trail use condition under 16 U.S.C. § 1247(d) (49 C.F.R. §1152.29) must be filed by August 22, 2011, and should address that issue.**” (Bold added.)

6. No request for a trail use condition was filed by August 22, 2011.

7. No pleading was filed addressing the issue of whether “interim trail use in an adverse abandonment would be consistent with the grant of such an [adverse abandonment] application.”

8. In the decision served on July 27, 2011, the Board had this to say about Offers of Financial Assistance (“OFA”):

“Any OFA under 49 C.F.R. § 1172.27 to acquire the lines for continued rail service **must be filed by no later than 10 days after service of a decision granting the application.**” (Bold added.)

9. In their joint January 20, 2012 Opposition to Riffin’s January 18, 2012 filings (including Riffin’s OFA), and in their joint February 1, 2012 Motion to Strike, the SRC and the Estate jointly argued that OFAs had to be filed no later than Day 120.

10. Now, the SRC and the Estate conveniently chose not to mention that interim trail use requests had to be filed by Day 45.

11. The Doctrine of Judicial Estoppel would estoppe the SRC and the Estate from arguing at this time, that the Board should entertain interim trail use requests.

12. Furthermore, the decision served on July 27, 2011 expressly stated that interim trail use requests “**must** be filed by August 22, 2011.” The date for filing an interim trail use request has

long since passed. In addition, no one bothered to file a brief addressing the issue of whether interim trail use was appropriate in an adverse abandonment proceeding.

13. What will be interesting will be whether SRC and / or the Estate file a Reply to this Reply, since the SRC and the Estate have previously argued that the rule prohibiting a reply to a reply, should be strictly enforced.

14. WHEREFORE, Riffin would ask that the Board declare that the Board will not entertain interim trail use / rail banking requests in this proceeding, since no interim trail use request was timely filed, and since no brief was filed addressing the issue of whether interim trail use is appropriate in an adverse abandonment proceeding, and for such other relief as would be appropriate.

Respectfully submitted,



James Riffin  
1941 Greenspring Drive  
Timonium, MD 21093  
(443) 414-6210

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of March, 2012, a copy of the foregoing Reply to Interim Trail Use letters, was served by first class mail, postage prepaid, upon Alex Snyder, Barley Snyder, P.O. Box 15012, York, PA 17405-7012 and upon Keith G. O'Brien, Baker and Miller, Ste 300, 2401 Pennsylvania Ave, Washington, DC 20037.



James Riffin