

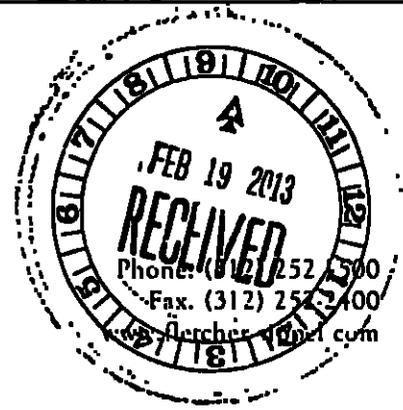
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February 18, 2013



VIA FEDERAL EXPRESS

FEE RECEIVED
FEB 19 2013

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20024

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Part of
Public Record

Re. **STB Docket AB-1076X - 233812**
**Caddo Valley Railroad Company - Abandonment Exemption -
In Clark, Pike and Montgomery Counties, Arkansas**

STB Docket AB-1076 (Sub-No. 1X) 233813
**Caddo Valley Railroad Company - Abandonment Exemption -
In Pike and Clark Counties, Arkansas**

Dear Ms. Brown

On February 8, 2013, the West Central Arkansas Planning and Development District ("WCAPDD") late-filed a request for issuance of Notices of Interim Trail Use ("NITU") to negotiate with Caddo Valley Railroad Company ("CVRR") for acquisition of the right-of-way of both of the connecting line segments that are the subjects of the above-captioned proceedings for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) ("Trails Act") and 49 C.F.R. § 1152.29. WCAPDD included in its filing a letter from the President of CVRR indicating that CVRR had not yet consummated the abandonment of either line segment and was willing to negotiate for interim trail use/rail banking with WCAPDD.

On February 12, 2013, Betty Pennington, apparently a local landowner, filed an unverified comment in opposition to WCAPDD's request which, among other things, asserted that WCAPDD was not entitled to a waiver of the filing fees for requesting issuance of the NITUs because WCAPDD does not qualify for such a waiver under the Board's rules.

WCAPDD respectfully submits that it fits within the broad definition of "state or local government entity" under 49 C.F.R. § 1002.2(e)(1) of the Board's rules and that waiver of the filing fees is appropriate. WCAPDD is an entity established and recognized by Arkansas statute. It is not a "business" that sells products or provides a service for compensation. Its purpose, as defined in the Arkansas statute, is "to promote economic development, to assist local

FLETCHER & SIPPEL LLC

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February 18, 2013

Page 2

governments and private organizations in obtaining federal grants and loans, to prepare comprehensive regional plans for economic development and improved government services, to enlist private support for these activities, and to coordinate private and public programs in the multi-county districts." Ark. Code Ann § 14-166-201(a)(1) It is specifically recognized in the Arkansas statute as one of eight planning and development districts in the State of Arkansas. Section 14-166-202(a)(7). By state law, the majority of its governing board of directors are elected officials of local governments Section 14-166-203(b) It is also the recipient of state funds provided by the State of Arkansas Department of Finance and Administration Section 14-166-204(b)(1). A copy of the above sections of the Arkansas statute is attached. WCAPDD respectfully submits that this is more than sufficient for it to be considered a "state or local government entity" under the Board's rules and the filing fees are, therefore, waived

In the event that the Board concludes otherwise, a check in the amount of \$500 00 in payment of the filing fees for the requests for an NITU for both line segments is enclosed. If the Board agrees that the filing fees are waived, WCAPDD respectfully requests that the Board return the check to the undersigned in the enclosed envelope.

The remainder of Ms Pennington's arguments constitute a collateral attack on the Trails Act, under which the Board's role is largely ministerial. *See, e.g., Pickens Railway Company -- Abandonment Exemption -- In Pickens County, SC.* Docket No. AB-1097X (STB served October 26, 2012) at 2-3.

Ten copies of this letter are enclosed for filing with the Board.

Respectfully submitted.



William C. Sippel
Attorney for West Central Arkansas Planning
and Development District, Inc.

WCS/pj

Enclosure

cc: Ms Betty Pennington

West's Arkansas Code Annotated Currentness

Title 14. Local Government

Subtitle 10. Economic Development and Tourism Generally (Chapters 162 to 182)

Chapter 166. Planning and Development Organizations (Refs & Annos)

→ Subchapter 1. General Provisions Reserved

West's Arkansas Code Annotated Currentness

Title 14. Local Government

Subtitle 10. Economic Development and Tourism Generally (Chapters 162 to 182)

Chapter 166. Planning and Development Organizations (Refs & Annos)

Subchapter 2. Multi-County Planning and Development Organizations

→ § 14-166-201. Objective

(a)(1) The purpose of this subchapter is to encourage multi-county planning and development organizations which have been formed, or which may be formed in the future, as voluntary nonprofit associations to promote economic development, to assist local governments and private organizations in obtaining federal grants and loans, to prepare comprehensive regional plans for economic development and improved government services, to enlist private support for these activities, and to coordinate private and public programs in the multi-county districts.

(2) Recognizing the beneficial services to be provided the people of this state through the activities of such multi-county planning and development organizations established for the aforementioned purposes, and in order to encourage such organizations in their efforts to provide these beneficial services, the General Assembly establishes a program of providing financial assistance to the associations to enable them to continue and expand their activities in furtherance of the purposes of this subchapter.

(b) Nothing in this subchapter is intended to be inconsistent with or contrary to a policy of relying on the private enterprise system

→ § 14-166-202. Designation of districts

(a) The General Assembly recognizes as planning and development districts the boundaries of the following eight (8) economic development districts:

(1) Northwest Arkansas Economic Development District, Inc., consisting of Benton, Washington, Madison, Carroll, Boone, Newton, Marion, Searcy, and Baxter counties;

(2) North Central Arkansas Economic Development District, Inc., consisting of Fulton, Izard, Sharp, Stone, Independence, Jackson, Van Buren, Cleburne, White, and Woodruff counties,

(3) Northeast Arkansas Economic Development District, Inc., consisting of Randolph, Clay, Lawrence, Greene, Craighead, Mississippi, Poinsett, Cross, Crittenden, St Francis, Lee, and Phillips counties,

(4) Southeast Arkansas Economic Development District, Inc., consisting of Grant, Jefferson, Arkansas, Cleveland, Lincoln, Desha, Bradley, Drew, Chicot, and Ashley counties,

(5) Southwest Economic Development District of Arkansas, Inc., consisting of Sevier, Howard, Little River, Hempstead, Nevada, Ouachita, Dallas, Calhoun, Miller, Lafayette, Columbia, and Union counties;

(6) Western Arkansas Economic Development District, Inc., consisting of Crawford, Franklin, Sebastian, Logan, Scott, and Polk counties;

(7) West Central Arkansas Economic Development District, Inc., consisting of Johnson, Pope, Conway, Yell, Perry, Montgomery, Garland, Pike, Clark, and Hot Spring counties; and

(8) Central Arkansas Economic Development District, Inc., consisting of Faulkner, Saline, Pulaski, Lonoke, Prairie, and Monroe counties.

(b)(1) If a municipality is located in two (2) or more counties which are situated in different planning and development districts, then if the governing body of the municipality so determines by ordinance, the entire area of the municipality may be deemed attached to the planning and development district which has the county with the highest proportion of the population of the municipality.

(2) The population of the municipality shall be based upon the most recent federal decennial or special census data available for the municipality

(c)(1) Nothing in this subchapter is intended to change or conflict with the status of regional and metropolitan planning commissions or councils of governments established under § 14-17-301 et seq and § 14-56-501 et seq

(2) This subchapter does not change the designation of urban and metropolitan planning organizations presently recognized by the Department of Finance and Administration for programs of the Department of Housing and Urban Development or any other department of the federal government.

→ § 14-166-203. Representative organizations; qualifications; control

(a) The governing boards of directors of the eight (8) economic development districts are recognized as the representative organizations of the initial planning and development districts as recognized in § 14-166-202.

(b) In order to qualify for the benefits of the provisions of this subchapter, the representative organization of a planning and development district shall have a governing board of directors, a majority of whose members are elected officials of local governments and the remainder of whose members represent economic development organizations and organizations broadly representative of diverse community interests.

(c)(1) The operations of representative organizations of planning and development districts shall be solely within the discretion and control of the local governing boards of directors of the respective districts, it not being the intention of the General Assembly that anything in this subchapter creates any power, authority, or control in any state agency over the management and operations of the organizations.

(2) Continued state financial support of organizations as provided in this subchapter shall terminate with respect to any organization that uses state funds for any purpose not within the intent and purposes of this subchapter until the organization shall make restitution for any misused funds and furnishes proof of compliance with respect to future operations.

→ § 14-166-204. Payments to organizations; purpose

(a)(1) The Department of Finance and Administration is authorized to make payments from time to time to officially recognized organizations of planning and development districts from state funds appropriated for that purpose.

(2) Payments shall be scheduled as nearly as possible to begin on July 1 of each fiscal year and on the first day of each calendar quarter thereafter.

(b)(1) Funds appropriated for payments to recognized organizations of planning and development districts shall be allocated, in equal shares, among the initial eight (8) recognized districts as established in § 14-166-202.

(2) If, in the future, any change occurs in the district boundaries of any of the initial eight (8) districts, as authorized in § 14-166-202, the number one (1) allocation of appropriated funds to the former districts which comprise counties reorganized in the new district shall be apportioned to the new district in accordance with equitable criteria established by the Department of Finance and Administration and published in advance prior to the establishment of the new district.

→ § 14-166-205. Application for funds; requirements

(a)(1) Whenever the General Assembly shall have appropriated funds to be used for making payments as au-

thorized in this subchapter, the Department of Finance and Administration shall notify the respective boards of directors of the planning and development districts of the amount allocated to the district as provided in § 14-166-204 and shall notify the district that application for the funds may be made upon forms provided by the department

(2) Upon receipt of application for such allocated funds from a district, the department shall determine that the following conditions have been met before making payments

(A) The organization applying for payment is officially recognized as a designated district in accordance with § 14-166-202 and § 14-166-203;

(B) The governing board of directors of the organization shall certify that a proposed budget has been established for the expenditures of state and local funds for purposes consistent with the purposes of this subchapter;

(C) The organization has obtained nonfederal matching funds committed from local governments or private sources at least equal to the amount of the payment of state funds, and the president or treasurer of the board of directors of the organization shall certify, from time to time, that such matching funds from local or private sources are on deposit to the organization's own account before quarterly payments of state funds may be made to the district.

(D) At the end of each fiscal year, an audited report of expenditures of the district shall be submitted to the department, and any state funds unexpended or unobligated by June 30 shall be returned by the district to the State Treasury. In addition, if the district shall have used any state funds for any purpose not within the purposes of this subchapter, the amount thereof shall be reimbursed to the State of Arkansas before any additional payments may be made to the district

(b) Upon receipt of the application for funds from a district, the department shall review it, and if the department shall determine that the district is qualified to receive payments under this subchapter, state funds shall be paid to the district on a dollar-for-dollar matching basis of funds provided from local or private nonfederal sources. However, in no event may state matching funds exceed the amount of funds allocated to the district for the fiscal year from funds appropriated for it

(c)(1) It is the specific intention of the General Assembly that all or part of the state and local funds may be used to qualify for matching federal funds to be used for the purposes provided in this subchapter.

(2) In the event a district shall not qualify for the total amount of state funds allocated to the district during any fiscal year because of failure to provide the required matching funds from nonfederal local or private sources, the amount thereof for which the district does not qualify shall remain in the State Treasury and shall not be apportioned for payment to other districts, it being the intention of this section that each district shall receive no payment in excess of the pro rata share of state funds allocated to the district.