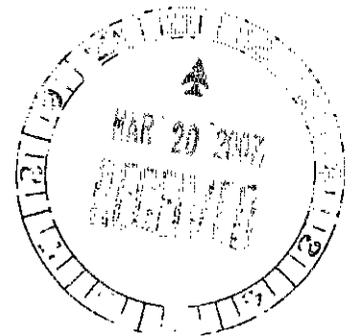


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ORIGINAL



March 20, 2007

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

RECEIVED  
Office of Proceedings

MAR 20 2007

Public Hearing

Enclosed for filing in STB Docket No. AB-1001X, Chillicothe-Brunswick Rail Maintenance Authority-Discontinuance Exemption-In Livingston, Linn and Chariton Counties, MO. are the original and ten copies of the Petition and Reply of John Rupp, Jr. Steve Waits, Jim Daugherty, John Foster, Kevin Foster, Wayne Foster, R & H Sanders Farms, Inc., Leonard T. Stephens, Steve Winkey, Jim Waits, Mary Kenney and Gerald Sowers.

Additional copies of this letter and of the Petition and Reply are enclosed for you to stamp to acknowledge your receipt thereof and to return via the messenger.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,

  
Fritz R. Kahn

enc.  
cc: Charles H. Montange, Esq.

**ORIGINAL**

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

\_\_\_\_\_  
STB Docket No. AB-1001X

CHILlicothe-BRUNSWICK RAIL MAINTENANCE AUTHORITY  
-DISCONTINUANCE EXEMPTION-  
IN LIVINGSTON, LINN AND CHARITON COUNTIES, MO

STB Docket No. AB-993X

MOTIVE RAIL, INC. D/B/A MISSOURI NORTH CENTRAL RAILROAD  
-DISCONTINUANCE EXEMPTION-  
IN LIVINGSTON, LINN AND CHARITON COUNTIES, MO

ENTERED  
Office of Proceedings

MAR 20 2007

Part of  
Public Record

\_\_\_\_\_  
PETITION AND REPLY  
OF

JOHN RUPP, JR., STEVE WAITS, JIM DAUGHERITY,  
JOHN FOSTER, KEVIN FOSTER, WAYNE FOSTER,  
R & H SANDERS FARMS, INC., LEONARD T. STEPHENS,  
STEVE WINKEY, JIM WAITS, MARY KENNEY AND GERALD SOWERS

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Attorney for

JOHN RUPP, JR., STEVE WAITS, JIM DAUGHERITY,  
JOHN FOSTER, KEVIN FOSTER, WAYNE FOSTER,  
R & H SANDERS FARMS, INC., LEONARD T. STEPHENS,  
STEVE WINKEY, JIM WAITS, MARY KENNEY AND  
GERALD SOWERS

Dated: March 20, 2007

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.



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STB Docket No. AB-1001X

CHILlicothe-BRUNSWICK RAIL MAINTENANCE AUTHORITY  
-DISCONTINUANCE EXEMPTION-  
IN LIVINGSTON, LINN AND CHARITON COUNTIES, MO

STB Docket No. AB-993X

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PETITION AND REPLY  
OF

JOHN RUPP, JR., STEVE WAITS, JIM DAUGHERITY,  
JOHN FOSTER, KEVIN FOSTER, WAYNE FOSTER,  
R & H SANDERS FARMS, INC., LEONARD T. STEPHENS,  
STEVE WINKEY, JIM WAITS, MARY KENNEY AND GERALD SOWERS

Petitioners, John Rupp, Jr., and Steve Waits of Chillicothe, MO, Jim Daugherity, John Foster, Kevin Foster and Wayne Foster of Sumner, MO, R & H Sanders Farms, Inc., and Leonard Stephens of Triplett, MO, Steve Winkey of Aplington, IA, Jim Waits of Meadville, MO, Mary Kenney of Roeland Park, KS, and Gerald Sowers of Brunswick, MO, pursuant to 49 C.F.R. 1117.1, petition for leave to intervene in these proceedings in opposition to the Joint Motion of the City of Chillicothe ("Chillicothe") and the Chillicothe-Brunswick Rail Maintenance Authority ("Authority"), filed March 12, 2007, seeking the entry of a Notice of Interim Trail Use

or Abandonment (“NITU”). Petitioners have an interest in the proceeding, because they are owners of property adjacent to the right-of-way, and they believe that Chillicothe and the Authority are attempting to abuse the Board’s authority in seeking the entry of a NITU to their detriment and discomfiture. Allowing their intervention will not prolong the proceeding or adversely affect the interests of any of the parties.

Intervenors, pursuant to 49 C.F.R. 1104.13, assert that the Board’s regulation, 49 C.F.R. 1152.29, permits of no doubt that a NITU is to be granted only if a “rail line [is] proposed to be abandoned.” Neither Chillicothe nor the Authority is proposing to abandon a rail line. Indeed, the right-of-way which Chillicothe claims to own, between Milepost 226 at or near Chillicothe and Milepost 188.56 at or near Kelly, is of a railroad line long abandoned. The Board is without authority to issue a NITU once a railroad line has been abandoned. RLTD Railway Corp. v. Surface Transp. Bd., 166 F.3d 808, 814 (6<sup>th</sup> Cir. 1999); Becker v. Surface Transp. Bd., 132 F.3d 60, 63 (D.C. Cir. 1997); Birt v. Surface Transp. Bd., 90 F.3d 580, 588 (D.C. Cir. 1996); Fritsch v. I.C.C., 59 F.2d 248, 253 (D.C. Cir. 1995).

In their Joint Motion, Chillicothe and the Authority, strain mightily to find authority in earlier decisions of the Board, or its predecessor, the Interstate Commerce Commission, for the imposition of the NITU. The decisions, however, are inapposite, and it is not worth the time and effort to distinguish the circumstances of the cited proceedings from those at hand.

WHEREFORE, John Rupp, Jr., Steve Waits, Jim Daugherty, John Foster, Kevin Foster, Wayne Foster, R & H Sanders Farms, Inc., Leonard T. Stephens, Steve Winkey, Jim Waits, Mary Kenney and Gerald Sowers ask that they be permitted to leave to intervene in these proceedings and to oppose the Joint Motion of the City of Chillicothe and the Chillicothe-Brunswick Rail

Maintenance Authority that a Notice of Interim Trail Use or Abandonment be issued.

Respectfully submitted,

JOHN RUPP, JR., STEVE WAITS, JIM DAUGHERITY,  
JOHN FOSTER, KEVIN FOSTER, WAYNE FOSTER,  
R & H SANDERS FARMS, INC., LEONARD T. STEPHENS,  
STEVE WINKEY, JIM WAITS, MARY KENNEY AND  
GERALD SOWERS

By their attorney,



Fritz R. Kahn  
Fritz R. Kahn, P.C.  
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Washington, DC 20036-1601  
Tel.: (202) 263-4152

Dated: March 20, 2007

#### CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Petition and Reply upon counsel for the City of Chillicothe and the Chillicothe-Brunswick Rail Maintenance Authority, by facsimile transmitting and by mailing copies thereof by prepaid first-class mail to their attorney, Charles H. Montange, Esq.

Dated at Washington, DC, this 20th day of March 2007.



Fritz R. Kahn