



Rails-to-Trails Federal Rail Banking Program

TransAction Conference 2010

Vice Chairman Francis P. Mulvey

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Atlantic City, New Jersey



STB Background

- Surface Transportation Board is the independent economic regulatory agency for the railroad industry
- Three Board members
- Handles
 - Railroad rate and service disputes
 - Railroad mergers and acquisitions
 - Abandonments and new construction
 - Limited jurisdiction over other modes

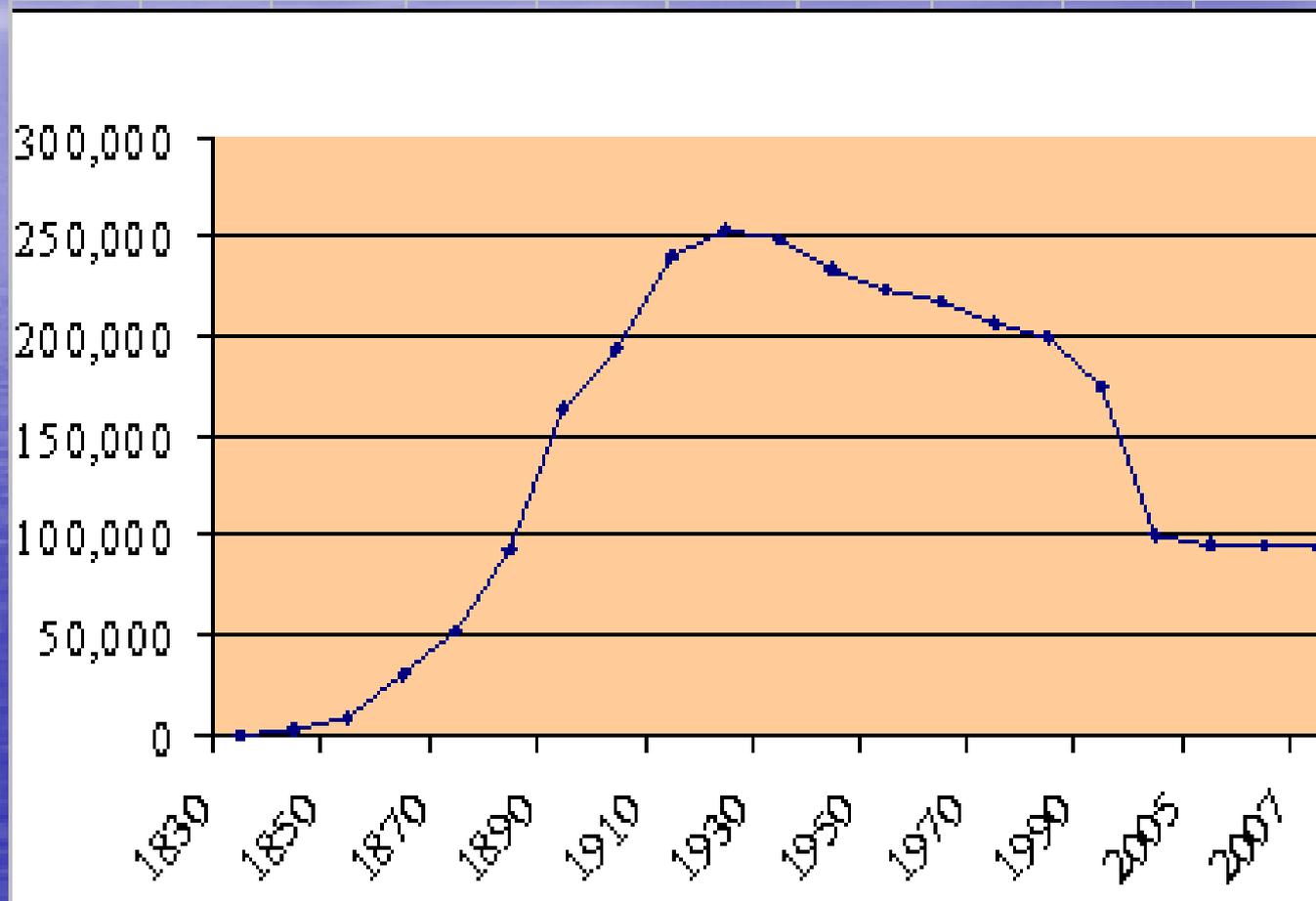


Historical Context for Rails-to-Trails

- 1970s - Railroad industry in terrible financial shape
- Numerous railroads filed for bankruptcy (e.g., Penn Central)
- Staggers Rail Act of 1980 - Made it easier for railroads to abandon unprofitable rail lines and rationalize their systems
- Downside of relaxation of abandonment rules was that rail corridors that might one day be returned to profitable rail service were being permanently removed from the national rail network



Growth & Decline of Class I RR Miles





Section 8(d) of the National Trails System Act

- In 1983, Congress passes Section 8(d) – known as the Trails Act
- Purpose was to allow the preservation of railroad corridors for future use
- “Rail banking” allowed rail corridors that would otherwise be abandoned to be used in the interim as recreational trails.
- Permits railroad to salvage the line during trail use



Trails Act Process

- When a railroad seeks STB authority to abandon a line, a party seeking to establish a trail on that line may file a Trail Use Request with the STB Board.
- The railroad notifies the Board whether it consents to negotiate a trail use agreement with the trail proponent.
- If the railroad consents, the Board imposes a Certificate or Notice of Interim Trail Use (CITU/NITU), which puts the abandonment on hold
- The railroad and the trail proponent then have 180 days to negotiate an agreement, a period that can be extended by agreement.



Trails Act Result

- If a trails use agreement reached, the line is “rail banked”
- The agreed upon transaction can be a lease, sale, or donation of the line to the trail user
- Trail user may then convert the line to a trail.
- Line is subject to restoration to rail use at any time – at the election of the railroad.



Trail Use Requirements

- Trail user must agree to assume responsibility for the management of the trail, for paying the property taxes for the right-of-way, and for any liability in connection with trail use.
- “Statement of Willingness” by trail user to assume these responsibilities is a prerequisite to any trail use negotiations.



STB's Role in Rails to Trails Program

- STB has long described its role in administering the Trails Act as ministerial
- The agency has interpreted the Trails Act as *requiring* it to issue a NITU whenever an appropriate Statement of Willingness is filed and the railroad consents to negotiations
- The Board does not determine the type of trail that the sponsor will build nor does it police whether the trail user follows through with any particular plans to build the trail
- The Board will revoke a NITU only if the trail sponsor fails to live up to its Statement of Willingness (e.g., pay the taxes).



Trail Use Utilization

- The Board has issued hundreds of CITU/NITU decisions authorizing trail use negotiations
- Many trail use agreements have been reached
- Others result in multi-year negotiations, during which the line is not abandoned.
- The Board has authorized 9 rail banked lines to restore active rail service (thereby terminating trail use).



Rail Banking Statistics

- 301 rail corridors (5079 miles) rail banked under the Trails Act
- 120 of these corridors (2764 miles) have developed trails open to the public
- 72 of these corridors (1122 miles) have trails under development
- 159 corridors (2974 miles) where a NITU/CITU was issued were abandoned after trail use negotiations did not result in agreement

(Source: Rails-to-Trails Conservancy, July 2009 STB Hearing Testimony)



Trail Use Issues

- Recently, trail use litigation and informal assistance has risen at the Board.
- Issues:
 - May a trail user remove track from the right-of-way in order to construct a trail?
 - Is the trail owner responsible for replacing any removed railroad equipment if the railroad returns the line to service?
 - Was a line fully abandoned prior to any request for trail use, thereby terminating the Board's jurisdiction and ability to authorize trails use?



Reversionary Property Owner Issues

- Reversionary property owners sometimes object to the trail
 - Property valuation
 - Increased pedestrian traffic
 - Safety, Crime
 - May have believed that land would be revert to them if rail service ceased
- Property owners often seek compensation from the federal government, arguing that the trail conversion was an unconstitutional taking of their property.



Success or Failure???

POSITIVES

- Lots of great examples of built trails
 - Hi-Line in NY
 - Bizz Johnson Trail in Northern CA
 - Cowboy Trail NE
- Rail banked lines have been brought back into rail service; other rail banked lines remain available for future service
- Relatively simple administrative process



Success or Failure???

NEGATIVES

- Status of many rail lines with NITUs may not be clear to public; negotiations for trail use can continue for years
- Some rail corridors for which a NITU has been issued have not been turned into trails
- Federal government has paid lots of money in compensation to reversionary land owners
- Litigation over trails issues at the Board has increased



2009 Hearing

- July 2009 - the Board held a hearing to review the history of the rail banking program
- Testimony from railroads, trail groups, reversionary property groups, environmental groups.
- Made clear that interesting issues will continue to come up



Thank you
Any Questions?

