United States General Accounting Office

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Report to the Honorable
Sam Brownback, U.S. Senate

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SURFACE TRANSPORTATION

Issues Related to Preserving Inactive Rail Lines as Trails

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GAO

United States
General Accounting Office
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Resources, Community, and
Economic Development Division

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The Honorable Sam Brownback
United States Senate

Dear Senator Brownback:

The Congress, in 1983, amended the 1968 National Trails System Act to give interested parties the opportunity to negotiate agreements with rail carriers to use railroad rights-of-way (the property used for rail lines) for trails.[1] The amendments provided rail carriers with an alternative, referred to as "rail banking," to abandoning unused rights-of-way. When rights-of-way are abandoned, they are no longer part of the national transportation system and, depending on how state law would apply, may revert to landowners with underlying rights to them. In contrast to formal abandonment, rail banking preserves a right-of-way for the possible restoration of rail service in the future and, in the interim, makes the property available for use as a trail. The Surface Transportation Board (the Board) administers the rail-banking program under which a trail sponsor assumes full managerial, financial, and legal responsibility for a right-of-way.[2] Concerns have been raised, however, by some landowners adjoining these rights-of-way about the lack of opportunity for them to either recover the use of that property or to express their views about how the property is being used, among other issues.

In response to these concerns, this report describes (1) the implementation process for rail banking, including whether it protects the various interests of landowners, communities, rail carriers, and those interested in converting the rights-of-way to trails; (2) the extent to which rail-banked property has returned to use as rail lines and the potential for future reactivation of rights-of-way for rail service; and (3) whether rail banking facilitates the return of these rights-of-way to rail service.

Results in Brief

Rail banking is a voluntary agreement between a rail carrier proposing to abandon a right-of-way and a party interested in converting it to a trail (trail sponsor). During the abandonment process, a trail sponsor submits a

[1]The 1983 National Trails System Act Amendments (Trails Act Amendments) are codified at 16 U.S.C. 1247(d). Trails can be used for recreation or other purposes.

[2]The Board is an independent adjudicatory agency that is administratively housed in the Department of Transportation. It took on many of the core rail functions and certain other functions of the Interstate Commerce Commission, which was abolished by the Congress through the Interstate Commerce Commission Termination Act of 1995.

request to the Board to use the right-of-way as a trail. In this request, the trail sponsor must agree that (1) the use of the right-of-way is subject to the restoration of rail service and (2) it will assume all managerial, financial (including payment of property taxes), and legal responsibility for the right-of-way, including any liability arising out of its use as a trail. If the Board determines that the right-of-way can be abandoned and if the rail carrier agrees to negotiate, the Board will issue trail use authority to the trail sponsor to allow the parties to negotiate a trail use agreement. If a rail-banking agreement is reached between the parties, it may be implemented without any analysis or approval by the Board. Approval of the trail use agreement is not required from the landowners that may have underlying rights to the property, the local community, or any other entity. Because rail-banked properties are not considered to be abandoned under the law, the rights-of-way remain intact and adjoining property owners do not have use of the rights-of-way. However, landowners, communities, trail users, or others with concerns about whether a trail sponsor is meeting the two requirements above can petition the Board to address these concerns. In 1990, the Supreme Court upheld the constitutionality of the rail-banking statute and held that landowners may seek compensation in federal courts if they believe their property was taken without compensation by rail banking.

While the Board has received about 300 requests to use rights-of-way as trails since the Trails Act Amendments of 1983, the number of rail-banked rights-of-way is not known because the Board does not monitor what happens to these rights-of-way once the trail sponsors enter into negotiations with the rail carriers. However, the Rails-to-Trails Conservancy, a nonprofit organization that promotes the nationwide development of trails over former rail lines (including rail-banked lines), has identified approximately 147 trails established or being developed on these rail-banked rights-of-way. Of the rights-of-way that have been rail banked, three have been returned to rail service. Officials with four of the largest rail carriers (in terms of their revenues) and trail sponsors told us that the likelihood of additional rail-banked rights-of-way returning to rail service in the near future is low. Officials with two of these rail carriers told us they are only rail banking those rights-of-way for which they see little to no future potential for the reactivation of rail service; concerns over limited system capacity, potential delays in restoring rail service, and public challenges to the removal of popular trails are drawbacks to these rail carriers' participation in rail banking.

Concerning whether rail banking facilitates the return of rights-of-way to rail service, rail banking offers carriers some advantages over abandoning unused rights-of-way. For example, while returning rail-banked rights-of-way to rail service may require some environmental studies, rail carrier officials told us the carriers can avoid the cost of repurchasing or condemning land (which may have reverted to adjoining landowners upon abandonment) to reassemble or reconstruct a rail line. In addition, these officials noted that the costs of reconstructing a line are less than if the property was abandoned because rail banking does not permit a trail sponsor to take any action that would impede the restoration of rail service—which may not be the case if the property was abandoned and thereby made available for other types of development.

Background

To establish a nationwide system of nature trails, the Congress enacted the National Trails System Act of 1968 (Trails Act). As originally enacted, the Trails Act made no specific provision for the conversion of abandoned railroad rights-of-way to trails. The Congress's first effort to encourage this type of action appeared in the Railroad Revitalization and Regulatory Reform Act of 1976, which authorized rights-of-way that would have been abandoned to instead be offered for acquisition for public purposes (including recreational use). To further encourage the development of trails, the Congress passed the Trails Act Amendments of 1983, which stated that if a rail right-of-way proposed for abandonment is instead used as a trail and the right-of-way is preserved for future rail service, then the right-of-way would not be considered abandoned. In passing the amendments, the Congress intended to eliminate a problem with the 1976 act—namely, that once rights-of-way were abandoned, the property comprising the rights-of-way would revert to any landowners with underlying rights to it, thus making it potentially unavailable for use as a trail.

Many rail carriers do not own the land on which their tracks lie. Sometimes adjoining property owners may have what is commonly called a reversionary interest in the land, meaning that when a right-of-way is fully abandoned, the land may then be available for the full, unencumbered use by the landowner and is, therefore, not necessarily available for use as a trail.[3] Under some states' laws, when rail use terminates, the land on which a rail line sits may pass to the adjoining landowners. Whether the land reverts to the adjoining landowners depends on state laws, the nature

[3]The Board refers to landowners along a rail right-of-way as adjoining property owners. Property laws differ from state to state.

of the particular property interest conveyed to the railroad, and the sequence of private and regulatory actions that have taken place.

In some cases, rail carriers own the land on which their track sits outright and can dispose of it as they wish after the Board authorizes the abandonment of rail service. Once a rail right-of-way is abandoned, the Board no longer has jurisdiction over the corridor; appropriate state laws and property interests would then determine whether an abandoned right-of-way can be converted into a trail. Trails have been established on some rights-of-way that have been abandoned. According to data compiled by the Rails-to-Trails Conservancy, 930 trails have been developed over approximately 8,900 miles of abandoned rail rights-of-way outside of the rail-banking program.

The Trails Act Amendments directed the Board, the Department of Transportation, and the Department of the Interior to encourage state and local agencies and private interests to establish trails where appropriate. The federal agencies' roles differ, with the Board having the primary responsibility. The Board administers the rail-banking provisions of the Trails Act as a part of its railroad abandonment proceedings and has developed procedures for interested parties to participate in rail banking. The Department of Transportation's Federal Highway Administration (FHWA) provides technical assistance to those interested in constructing trails, including rail-banked trails, and administers the funding programs that can be used to develop trails. Finally, the Department of the Interior's National Park Service provides information to the public, in various publications and seminars, about rail-banking procedures and opportunities for creating trails.

Rail-banked trails are eligible to receive federal funds for trail construction; however, the states, rather than FHWA, determine which trail projects will receive funding. Under FHWA's Federal-Aid Highway Program, it is the responsibility of state (and sometimes local) governments to develop transportation plans that may or may not include rail-banked trails. An FHWA official estimated that approximately 90 percent of all rail-trail projects (whether rail banked or not) are funded from Transportation Enhancement funds, a subset of the Surface Transportation Programs funds. Other FHWA programs through which rail-banked trail projects may be funded include the regular Surface

Transportation Program, the Congestion Mitigation and Air Quality Improvement Program, and the Recreational Trails Program.[4]

The Statutory Requirements of the Rail-Banking Process Are Limited and Do Not Address All Concerns of Various Parties

In administering the rail-banking program, the Board has established specific procedures for allowing interim trail use. Rail banking is a voluntary agreement between a rail carrier proposing to abandon a right-of-way and a potential trail sponsor. During the abandonment process, a trail sponsor submits a request to the Board to use a right-of-way as a trail. In this request, the trail sponsor must agree to meet the two requirements of the rail-banking amendments: (1) the use of the right-of-way is subject to the reactivation of rail service and (2) the trail sponsor assumes all liability for the property's management, taxes, and legal responsibilities. If the Board determines that the right-of-way can be abandoned and the two requirements of the statute are met, the Board authorizes the rail carrier and the trail sponsor to enter into negotiations on the use of the right-of-way as a trail. If a rail-banking agreement is reached, it may be implemented without any analysis or approval by the Board. Approval of the agreement is not required from adjoining landowners, communities, or others. However, landowners or others who are concerned that the trail sponsor is not meeting the two requirements can petition the Board to look into the matter. Because the Board's role is limited, landowners, communities, and trail sponsors must rely on other federal, state, or local laws for resolution of any issues relating to trail development, trail maintenance, and compensation for any taking of property.

[4]Rail-banked trails can also be funded through a variety of nonfederal sources. For example, state and local agencies, such as departments of natural resources or local parks and recreation departments, may administer funds that can be used for the acquisition and construction of trails. Nongovernmental funding may also be obtained from individuals, foundations, and corporations. Trail user fees are collected on some trails to pay for maintenance. Some trail sponsors use the proceeds from the salvage of rail equipment, such as track and ties, as a funding source. Income for the trail sponsor may also be available from utilities using the rights-of-way, for example, for telecommunications lines.

The Board's Role and Responsibilities Under the Rail-Banking Process Are Limited

Before rail banking can begin, a rail carrier must initiate abandonment procedures by seeking authority for abandonment from the Board and notifying various individuals, significant users of the rail line, and state and federal agencies. It must also publish notices in local newspapers.[5] To begin the rail-banking process, a trail sponsor must file a trail use request in the abandonment proceeding initiated by the rail carrier. This request must include (1) a map that clearly identifies the rail corridor proposed for trail use; (2) a statement of willingness to accept financial responsibility, manage the trail, pay the property taxes on the trail, and accept responsibility for any liability arising from the use of the right-of-way as a trail; and (3) an acknowledgment that the use of the right-of-way for a trail is subject to the sponsor's continuing to meet its obligations and that future reactivation of rail service on the right-of-way is possible. Only after the Board has determined that an abandonment will be permitted will it then consider any requests for trail use.

Because the rail-banking process is voluntary, a rail carrier seeking to abandon a right-of-way must notify the Board about whether it is willing to negotiate a trail use agreement. If the rail carrier declines to negotiate, the abandonment will proceed as if no trail use request was ever filed. If the rail carrier does agree to negotiate and no offer of financial assistance from another rail carrier to continue rail service on the line is received, the Board will issue trail use authority to the trail sponsor, who then has 180 days to negotiate an agreement with the rail carrier to rail bank the right-of-way and permit it to be used as a trail.[6]

The Board has no involvement in the negotiations between the rail carrier and the trail sponsor. While the Trails Act Amendments state that a right-of-way may be preserved through donation, transfer, lease, or sale to the trail sponsor, the Board does not analyze, approve, or set the terms of trail use agreements. According to Board officials, the Board does not receive copies of these agreements, and no approval is required from the landowners that may have underlying rights to the property, from the local

[5]The rail carrier is required to notify the following individuals and organizations of its intent to abandon a right-of-way (including its possible interim use as a trail): significant users of the line, the governor of the state, the state public service commission, the designated state agency, the State Cooperative Extension Service, the Federal Railroad Administration, the Department of Defense, the National Park Service, the U.S. Railroad Retirement Board, Amtrak, the Railroad Labor Executives' Association, the Forest Service, and all labor organizations with employees on the affected line. While the Board found actual notice to landowners to be impractical, in an attempt to notify all potentially interested parties, the Board requires that notices be placed in the local newspapers of each county in which the right-of-way lies. The Board also publishes a notice in the Federal Register.

[6]The Board will often grant an extension of that period at the request of both the rail carrier and the trail sponsor.

community, or from any other entity. If a trail use agreement is reached, the parties may implement it without further action by the Board. If no trail use agreement is reached, the trail use authority expires, and the right-of-way may be fully abandoned.[7]

According to the National Park Service, although no approval of rail-banking agreements is required from the public, many rail rights-of-way are rail banked or managed by local or state governments that are held accountable by their citizens. In addition, the National Park Service noted that trail development on rights-of-way rail banked by local governments typically involves a public review process, which, in many states, is required when FHWA funds are used for trail development. Finally, the National Park Service emphasized that communities often receive benefits from the development of rail-banked trails, such as an improved quality of life and increased economic development.

As shown in table 1, since 1987, trail use requests (that is, opportunities to negotiate rail-banking agreements with the rail carriers abandoning rights-of-way) have been sought for 395 of 1,747 (about 23 percent) of the railroad rights-of-way that have been proposed for abandonment. The Board approved 288 of the 395 (about 73 percent) requests to allow trail sponsors and rail carriers to negotiate rail-banking agreements. The Board can deny a trail use request only if the rail carrier refuses to participate in the rail-banking program; if the potential trail sponsor does not undertake, or is unable, to pay taxes and assume liability for the right-of-way; or if the trail sponsor does not agree to rail banking.[8]

[7]In the event that the trail sponsor cancels the trail use agreement and the rail carrier does not want to reinstitute service, the Board will reopen the abandonment proceeding and authorize a complete abandonment of the right-of-way.

[8]Trail use requests also cannot be authorized if the Board determines that it no longer has jurisdiction over the property in question.

Table 1: Abandonments and Trail Use Requests Made and Granted, Fiscal Years 1987 Through 1998

	Abandonments			Trail use requests		
Fiscal year	Cases filed	Granted	Miles	Cases filed	Granted	Miles
1987	189	96	1,301	18	6	264
1988	172	152	2,881	20	11	425
1989	198	180	2,232	22	15	457
1990	143	134	1,607	19	16	229
1991	122	121	1,893	14	12	387
1992	117	104	1,725	19	14	488
1993	147	138	1,896	44	34	904
1994	161	139	2,138	37	33	710
1995	154	141	1,994	34	30	569
1996	142	135	2,245	49	39	788
1997	106	91	1,253	60	36	430
1998	96	106	1,080	59	42	746
Total	**1,747**	**1,537**	**22,245**	**395**	**288**	**6,397**

Notes: Abandonments include applications filed, exemption petitions filed, and exemption notices filed.

Fiscal year 1987 was the first year for which complete Trails Act data are available.

Source: Surface Transportation Board.

According to a Board official, the actual number of rail-banking agreements (and the corresponding miles of rail-banked rights-of-way) that resulted from the 288 trail use requests that were granted is not known because the Board does not maintain this information. According to a Board official, if the rail carrier and trail sponsor do not come to terms on a rail-banking agreement, the rail carrier could abandon the right-of-way. For those agreements that are reached, the trail sponsor may later decide not to keep the property and notify the Board that it has canceled the trail use agreement. In addition, the Board does not have information on which entities hold these agreements.[9] According to a rail carrier official, if a rail-banking agreement contains provisions that would allow the right-of-way to be transferred, the initial trail sponsor could transfer the banked right-of-way to another party. The Board frequently grants requests for such transfers but does not maintain data on the extent to which they take place.

[9]Statistics maintained by the Board include some of this information but only for the initial trail use filings submitted during the abandonment proceedings.

While the Board does not maintain information on the extent to which trails are developed on rail-banked rights-of-way and has no list of open trails or trail projects underway, the Rails-to-Trails Conservancy maintains some information on which rail-banked rights-of-way have been developed into trails. According to its records, the 288 trail use requests that have been granted have resulted in 61 open trails in 19 states and the District of Columbia, representing approximately 1,758 miles of rail-banked rights-of-way. The Conservancy has identified an additional 86 trail projects under development in 21 states, comprising approximately 1,750 rail-banked miles.

While the Rail-Banking Process Does Not Protect Some Interests of Landowners and Others, Their Concerns May Be Addressed Under Federal, State, or Local Laws

Although the Board has a limited role in administering the rail-banking program, the Board has made it clear that when it is presented with serious questions from landowners, communities, or others about whether the two statutory conditions of rail banking are being met, it will look into the matter. For example, landowners or other members of the public may petition the Board if they believe that a trail sponsor has no intent of using a right-of-way as a trail or that the trail sponsor is not meeting its financial and liability obligations. If the Board determines that the trail sponsor is not meeting the statutory requirements, the interim trail use authority may be revoked and the right-of-way may be declared fully abandoned, at which point the right-of-way would no longer be part of the national transportation system and the property would revert to any landowners with underlying rights to it. According to Board officials, the Board has received fewer than 10 such petitions since the rail-banking program began, but in no case has the Board (or its predecessor, the Interstate Commerce Commission [ICC]) been presented with evidence that the two conditions for interim trail use were not being met by the trail sponsor.

For example, some landowners have petitioned the Board to require a trail sponsor to provide evidence that it is financially fit before the Board grants trail use authority. According to the Board, the prospective trail sponsor files a statement that it consents to take on this responsibility and uphold the requirements for interim trail use. Under the statute, a prospective trail sponsor—which may be a state or local government agency or a qualified private organization—may acquire a right-of-way as long as the financial and rail-banking requirements of the statute are met. The Board has determined that to be a qualified private organization, an organization must be willing to assume responsibility for the right-of-way and agree to rail banking. The Board defers to the rail carrier's decision to negotiate a rail-banking arrangement to determine whether the

prospective trail sponsor is financially responsible. The Board's position is that if a rail carrier does not believe a trail sponsor is likely to meet its obligations, the rail carrier will not conclude an agreement. The Board has stated that requiring the sponsor to provide detailed financial information or to pass a fitness test before the Board issues trail use authority could deter or delay trail use, which would be contrary to the Congress's intent to facilitate and encourage rail banking.

Landowners who believed their land was taken from them because of rail banking sought to have the statute declared unconstitutional. The U.S. Supreme Court, in a 1990 decision on a case involving Vermont property owners, upheld the constitutionality of the Trails Act Amendments.[10] The Court stated that the Constitution does not prohibit the taking of private property, only the taking of property without just compensation. The Court decided that landowners who believe their property has been taken for rail banking may seek compensation in federal courts.[11] Whether rail banking involves a taking of property in a particular case turns on the nature of the particular property interests involved, state law, and the private and regulatory actions preceding the alleged taking. For example, if the rail carrier entering into an agreement under the Trails Act owns its right-of-way outright, there is no taking. Over 20 takings cases are currently pending in federal courts involving trails in 11 states. One class-action suit involving a trail in Missouri has been certified and others seeking class certification are pending.

Because the Board can only address those concerns that pertain to the two rail-banking requirements, landowners, communities, trail users, or others must rely on state and local laws, not on the Board, for the resolution of other types of problems. For example, some landowners and trail advocates have voiced concerns that some trail sponsors are not developing trails adequately or are allowing utility companies to use the rail-banked rights-of-way instead of developing them as trails. However, the Board does not set rules on the type of trail to be constructed or on how long a trail sponsor should take to develop a trail. The Board has noted that there can be differing types or levels of trail use; for example, nothing in the rail-banking statute or the Board's regulations precludes a right-of-way from being developed for a mixed use, that is, combining a recreational trail with a highway or light rail line. Similarly, the Board has noted that a trail sponsor's receipt of revenues from a utility company maintaining transmission lines along the right-of-way is not, in and of

[10]Preseault v. ICC, 494 U.S. 1 (1990).

[11]See the Tucker Act (28 U.S.C. 1491(a)) and the Little Tucker Act (28 U.S.C. 1346(a)(2)).

itself, impermissible. The arrangement could simply be a way for the trail sponsor to obtain funds for the maintenance of the right-of-way and for liabilities and taxes and may not substantively affect the trail use or rail banking.

In addition, the Board has stated that there is no need for it to issue maintenance standards for rail-banked trails because, in general, trails must be maintained according to state and local land use plans, zoning ordinances, and public health and safety legislation. Landowners allegedly harmed by improperly maintained trails can present their complaints to the appropriate state, regional, and local entities. The Board has stated that state and local entities are attuned to the specific interests and needs of their communities and that nothing in its Trails Act rules or procedures is intended to usurp the rights of these entities from imposing appropriate regulations on trails.

Few Rail-Banked Rights-of-WAY Have Returned to Rail Service, and It Is Unlikely That Many More Will Do So

While the Board has no information on the number of rights-of-way that have been rail banked out of the 288 requests for trail use it has granted, the Board is aware of three rights-of-way returning to rail service after being rail-banked. The first case, filed in 1990, involved a small part (350 feet out of 64.5 miles) of a right-of-way in Iowa that had been rail banked the previous year. The second case, filed in 1993, involved 9.1 miles of a right-of-way in Ohio that had been rail banked 3 years earlier; according to the Rails-to-Trails Conservancy, this right-of-way had never been developed as a trail. The third case, filed in 1997, involved a 1,100-foot portion of 6.2 miles of right-of-way in Missouri that had been rail banked in 1992.

Similarly, the likelihood of additional banked rights-of-way being returned to rail service in the near future is low, according to rail carrier officials. An official with Union Pacific Railroad told us that it is not likely that the rail carrier will convert any of its banked corridors back to rail use unless a major change occurs in the business opportunities available along the rights-of-way—such as a large shipper deciding to relocate to one of the banked corridors. This official also noted that the rail carrier does not even maintain information on how many rights-of-way it has banked or where they are located. Officials with CSX Transportation told us that the rail carrier's banked corridors are probably not located in areas that would need freight service. An official with Norfolk Southern told us that the rights-of-way it agreed to bank were banked under the assumption that the conversion to trails would be permanent. This official noted that if the

carrier did try to resume rail service on a right-of-way that had been converted to a trail, there would likely be a "big fight" and negative publicity that the rail carrier would prefer to avoid. Only one rail carrier we contacted, Burlington Northern Santa Fe, has plans to restore service to a banked right-of-way; an official with this carrier told us it would like to restore rail service to 5 miles of one banked right-of-way.

Managers of trails that have been opened on rail-banked rights-of-way also told us that the property is not likely to be returned to rail service. For example, at one trail in Kansas, the Director of State Parks told us there are other active rail lines near the trail, leaving virtually no chance that any rail carrier would ever restore service on the banked right-of-way. According to a trail developer in Missouri, there has been no discussion of using the banked right-of-way for rail service because it was not a main rail line and other small rail lines in the area are still being abandoned. The manager of a trail in Massachusetts told us it is unlikely that the right-of-way will be returned to rail service because there are no companies along it that would need freight service.

Future opportunities for rail banking may be limited because the recent growth in rail traffic and the subsequent need for more rail capacity on some routes has led to fewer abandonments of rights-of-way, according to rail carrier officials. Moreover, two rail carriers—Norfolk Southern and CSX Transportation—have made the strategic decision not to abandon or bank additional rights-of-way where they see a potential for future rail service. Instead, the carriers are preserving them under a discontinuance authority, which relieves a rail carrier of its current obligation to provide service but allows it to retain the right-of-way. These rail carriers are choosing to keep these rights-of-way rather than face the potential problems associated with returning service to rights-of-way that have been rail banked. Rail officials noted that such problems could include public challenges to resuming rail service if the misperception develops among trail users that the trail is a public asset, like a beach or public park. According to rail officials, if this idea were supported by elected officials, the restoration of rail service could be blocked despite the intention of the Trails Act Amendments. In addition, delays in restoring rail service could arise if a trail has been constructed over the right-of-way. Finally, one official noted that the threat of litigation from landowners with underlying rights to the rail-banked property is avoided under a discontinuance authority.

Finally, a Board official stated that a rail carrier other than the original carrier can restore rail service to all or part of rail-banked rights-of-way. Because of constraints on the infrastructure of the current rail system and the recent and potential growth in rail traffic, the Board official cautioned that it is possible that additional rail-banked rights-of-way will be returned to rail service.

The Return of Inactive Rights-Of-Way to Rail Service Is Easier Under Rail Banking Than After an Abandonment

According to Board officials, the resumption of rail service over a banked right-of-way is a rather straightforward process for the rail carrier that originally agreed to rail banking. If the rail carrier that banked a right-of-way wants to return it to rail service, the carrier has to notify the Board; the abandonment proceeding is then reopened, and the trail use authority is revoked. However, if a different rail carrier wants to use the right-of-way, it must file an application for the construction and operation of a line of railroad.[12] Depending on the situation, this may trigger an environmental review by the Board under its requirements for initiating rail service. Of the three cases in which rail service was restored to portions of banked rights-of-way, the first involved a power company that in 1990 wanted to return service to a small portion of a line in Iowa that had been rail banked in 1989. ICC approved the resumption of rail service, noting, however, that the rail carrier that had banked the right-of-way needed to concur with this decision, which it did. In the second case, a rail carrier that was not the original carrier requested in 1993 that a right-of-way banked in 1990 in Ohio be returned to rail service. According to the attorney representing the requesting carrier, ICC did not require any environmental studies prior to approving the resumption of rail service. In addition, there was no public opposition to the reinstitution of rail service. ICC approved the unbanking of the right-of-way a few months after it was requested. In the third case, in Missouri, the rail carrier that had banked a right-of-way in 1992 requested in 1997 that a portion of it be returned to rail service; the Board approved the request within 2 weeks.

In addition to being a simpler process than that for reinstituting rail service on an abandoned right-of-way, rail banking offers some cost advantages to rail carriers. According to rail carrier officials, assembling a rail corridor is a massive and expensive undertaking. These officials told us that rail banking a right-of-way could eliminate the cost of reacquiring any land that, if abandoned, could have reverted to property owners or been developed in a manner that would make restoration of the

[12]The requirements to construct and operate a rail line are codified at 49 U.S.C. 10901. A rail carrier may also seek to be exempted from these requirements under 49 U.S.C. 10502.

right-of-way difficult. By rail banking a right-of-way rather than abandoning it, the rail carrier can also avoid the cost of trying to market the land or the cost of identifying and locating anyone with underlying rights to the property. In addition, because a trail sponsor is not permitted to create any impediments to resuming rail service, a rail carrier official told us a carrier would need to do less in terms of reconstruction along a right-of-way.

Agency Comments

We provided a draft of this report to the Department of Transportation and to the Department of the Interior for their review and comment. Subsequently, we discussed the draft report with Department of Transportation officials, including the Surface Transportation Board's Deputy Director of Proceedings and a senior attorney. The officials commented that the draft report was straightforward and that the facts presented accurately represent the rail-banking process. The officials also provided technical clarifications, which we incorporated, as appropriate.

In commenting on the draft report, the National Park Service of the Department of the Interior emphasized that the Service considers the rail-banking program to be very effective and many communities find it to be beneficial. The Service noted that rail banking's relatively brief 15-year existence has not provided enough time to determine the number of banked rights-of-way that may ultimately be returned to rail service. The Service also added that the lack of information on the number of banked rights-of-way shows that there is a need for tracking this information at the federal level. We have incorporated information in the report to recognize the Service's views concerning the public's participation in the rail-banking process and the benefits that communities receive from rail banking. The National Park Service also provided technical clarifications, which we incorporated, as appropriate.

Scope and Methodology

To gather information on the rail-banking approval process, including how it protects the various interests involved, how many rail-banked rights-of-way have returned to rail service, and whether rail banking facilitates the return of rail service, we interviewed officials of the Surface Transportation Board, the Federal Highway Administration, the National Park Service, and state transportation and parks and recreation offices in Kansas, Illinois, Idaho, and Alabama. We also discussed these issues with trail managers; rail carrier officials with Burlington Northern and Santa Fe Railway Company, CSX Transportation, Norfolk Southern Corporation,

and Union Pacific Railroad Company; officials with the Association of American Railroads and the Short Line and Regional Railroad Association; and attorneys involved with rail-banking litigation. In addition, we discussed the effectiveness of rail banking with representatives from both the Rails-to-Trails Conservancy and the National Association of Reversionary Property Owners.

We performed this work from April 1999 through October 1999 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Honorable John McCain and the Honorable Ernest F. Hollings, Chairman and Ranking Minority Member, Senate Commerce, Science, and Transportation Committee; the Honorable Bud Shuster and the Honorable James L. Oberstar, Chairman and Ranking Democratic Member, House Committee on Transportation and Infrastructure; the Honorable Rodney Slater, Secretary of Transportation; the Honorable Bruce Babbitt, Secretary of the Interior; Ms. Linda Morgan, Chairman, Surface Transportation Board; and Mr. Kenneth Wykle, Administrator, Federal Highway Administration. We will also make copies available to others on request.

If you or your staff have any questions about this report, please contact me at (202) 512-2834. Key contributors to this report were Helen Desaulniers, Leonard Ellis, Ralph Lamoreaux, Susan Poling, and Deena Richart.

Sincerely yours,

Phyllis F. Scheinberg
Associate Director, Transportation Issues

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