

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

243954

**GREAT LAKES BASIN TRANSPORTATION, INC – AUTHORITY
TO CONSTRUCT AND OPERATE A RAIL LINE IN INDIANA,
ILLINOIS AND WISCONSIN**

ENTERED
Office of Proceedings
July 14, 2017
Part of
Public Record

STB Finance Docket No. FD 35952

PETITION FOR REJECTION OF GLBT's APPLICATION*

ON BEHALF OF

SAVE OUR FARMLAND, LLC
(an *ad hoc* coalition of Rock County, Wisconsin stakeholders)

John Duncan Varda
Ron W. Kuehn
Jordan K. Lamb
Attorneys for
Save Our Farmland, LLC

Of Counsel:
DeWitt Ross & Stevens s.c.
Two East Mifflin Street, Suite 600
Madison, WI 53703
Tel: 608-255-8891
Fax: 608-252-9243
jdvarda@dewittross.com
rwk@dewittross.com
jkl@dewittross.com

Dated: July 14, 2017

* If the Board issues a decision accepting the Application for filing before it disposes of this Petition for Rejection, the Board is respectfully requested to treat this Petition as a Petition for Reconsideration of such decision.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**GREAT LAKES BASIN TRANSPORTATION, INC – AUTHORITY
TO CONSTRUCT AND OPERATE A RAIL LINE IN INDIANA,
ILLINOIS AND WISCONSIN**

STB Finance Docket No. FD 35952

PETITION FOR REJECTION OF GLBT's APPLICATION

**I. IDENTIFICATION – SAVE OUR FARMLAND, LLC
IS AN AD HOC COALITION OF ROCK COUNTY,
WISCONSIN STAKEHOLDERS.**

Save Our Farmland, LLC is a coalition of Rock County Wisconsin ("Rock County") business owners, active farmers, community leaders and landowners who will be negatively impacted if the new rail line proposed by the Great Lakes Basin Transportation, Inc. ("GLBT") were approved as proposed, north of the Illinois/Wisconsin State Line in Rock County, Wisconsin.

Save Our Farmland and the reasons for our opposition to GLBT's proposal in Rock County, Wisconsin are more fully described in Exhibit A to this Petition.¹

¹ Exhibit A is the "Initial Comments in Opposition the Application" prepared to be filed June 5, 2017 but not filed due to the entry of the Board's Decision issued June 2, 2017 setting aside that filing deadline.

II. SAVE OUR FARMLAND JOINS IN THE PETITION TO REJECT APPLICATION FILED JULY 10, 2017.

Save Our Farmland hereby joins in, and incorporates herein by reference, the “Petition for Rejection of Application” filed with the Board in this Docket on behalf of certain “Opponents”² on July 10, 2017, Document ID No. 243933 and including the errata supplement, Document ID No. 343940, filed July 12, 2017 (“Opponents’ Rejection Petition”).

III. ADDITIONAL CURRENT AND ONGOING ADVERSE IMPACTS WARRANT PROMPT REJECTION OF GLBT’S APPLICATION.

In addition to the reasons for rejection set out in the Opponents’ Petition and in addition to the potential adverse impacts from actual construction as described in Exhibit A to this Petition, Save Our Farmland submits that the mere pendency of GLBT’s Application – the threat of cutting through their farms – creates a cloud on the titles to their lands and diminishes the going concern values of their farms.

Even GLBT’s “Preferred Route Two” only describes the proposed route in general terms (both in narrative and on maps submitted with GLBT’s Application). As a consequence, titles to a swath of farms in the Rock County Towns of Beloit, Bradford, Johnstown, La Prairie, Lima,

² The “Opponents” are: Block GLB Railroad LaSalle County, IL; Kankakee County, IL Block GLB; Citizens Against the GLB Railroad, Boone County, IL; Rock Against the Rail, LLC; Railed, LaPorte, Porter & Lake Counties, IN; and Winnebago County Against the GLB Railroad.

Rock and Turtle wider than the proposed right-of-way have fallen under this cloud.

This cloud has a chilling effect on farm operations, best understood in light of the potential adverse impacts from actual construction of the GLBT proposed route as described in Exhibit A to the Petition.

Mere pendency of GLBT's application chills new and replacement capital investment in farm operations that are conducted under the cloud of GLBT's proposed route. Market values of these farms are not only under future threat but are currently diminished by pendency of the GLBT Application. Diminished market values increase the cost and limit the extent of financed working capital available for operation of these farms. The adverse impact is not diminished but increased by the fact that affected farmland and farms operations are among the most productive in Wisconsin. These farms are capital intensive enterprises.

Absent a substantive demonstration of financial capability and the support of prospective users of the proposed railroad line (shippers and other railroads), the GLBT Application amounts to little more than developer puffery that has the unfortunate consequence of inflicting real harm on farmland and farms in and near the proposed route of GLBT's speculation. GLBT's deficient Application has the effect of slandering title to these highly productive farmlands.

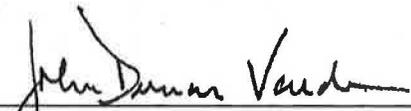
These types of tangible adverse effects on third parties provide ample reason for the Board to require that an Applicant seeking to construct a rail line, submit an Application that includes substantive evidence of financial capability and public interest to be served by construction of the proposed rail line.

Under the present circumstances, the appropriate remedy is the Board's prompt rejection of GLBT's Application.

CONCLUSION AND REQUESTED ACTION.

For the reasons stated herein and in the incorporated Petition for Rejection of Application (FD 35952, Document ID Nos. 243933 and 343940), Save Our Farmland requests that the Board promptly enter an order rejecting GLBT's Application.

Dated this 14th day of July, 2017.



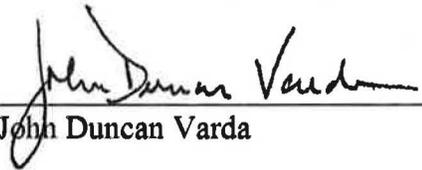
John Duncan Varda
Ren W. Kuehn
Jordan K. Lamb
Attorneys for Save Our Farmland, LLC

DeWitt Ross & Stevens s.c.
Two East Mifflin Street, Suite 600
Madison, WI 53703
Tel: 608-255-8891
Fax: 608-252-9243
jdvarda@dewittross.com
rwk@dewittross.com
jkl@dewittross.com

Certificate of Service

Undersigned hereby certifies that he has this day caused to be served copies of the foregoing Petition for Rejection of GLBT's Application in this FD 35952 by email or first class U.S. mail on parties of record in the manner set forth in the Board's Decision and Order late release on June 2, 2017 (STB Document ID No. 45856, including service on Applicant, Attorney Thomas F. McFarland representing the "Opponents" who filed the Petition for Rejection" referenced at Section II, herein above, and selected other parties of record.

Dated this 14th day of July, 2017.



John Duncan Varda

Exhibit A, Petition to Reject GLBT's Application

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**GREAT LAKES BASIN TRANSPORTATION, INC – AUTHORITY
TO CONSTRUCT AND OPERATE A RAIL LINE IN INDIANA,
ILLINOIS AND WISCONSIN**

STB Finance Docket No. FD 35952

**INITIAL COMMENTS IN OPPOSITION TO THE APPLICATION
AS FILED MAY 1, 2017**

ON BEHALF OF

SAVE OUR FARMLAND, LLC
(an *ad hoc* coalition of Rock County, Wisconsin stakeholders)

John Duncan Varda
Ron W. Kuehn
Jordan K. Lamb
Attorneys for
Save Our Farmland, LLC

Of Counsel:
DeWitt Ross & Stevens s.c.
Two East Mifflin Street, Suite 600
Madison, WI 53703
Tel: 608-255-8891
Fax: 608-252-9243
jdvarda@dewittross.com
rwk@dewittross.com
jkl@dewittross.com

Dated: June 5, 2017

Due: June 5, 2017

TABLE OF CONTENTS

	<u>Page</u>
I. IDENTIFICATION – SAVE OUR FARMLAND, LLC IS AN AD HOC COALITION OF ROCK COUNTY, WISCONSIN STAKEHOLDERS.	1
II. GLBT’s GREENFIELD ROUTING PRIORITY AND FREIGHT ASSUMPTIONS, AS TO ROCK COUNTY, SUPPORT A FINDING OF INCONSISTENCY WITH PUBLIC CONVENIENCE AND NECESSITY.	2
III. ADVERSE IMPACTS ON ROCK COUNTY FARMLAND AND FARMS REQUIRE FINDING GLBT’S ROUTE INCONSISTENT WITH THE PUBLIC CONVENIENCE AND NECESSITY.	5
A. GLBT’s Preferred Route Two Will Directly and Indirectly Adversely Impact Highly Productive Cropland and Livestock Farms and Related Agribusinesses.	5
B. GLBT’s Preferred Route Two in Rock County Will Impede the Movement of Livestock and Agricultural Equipment and Will Increase the Use of Local, County and State Roadways for Implements of Husbandry.	8
C. The Location, Placement and Management of GLBT’s Preferred Route Two in Rock County Will Affect Critical Farm Nutrient Management Plans.	10
D. Changing the Existing Land Grade Adjacent to the Rail Line Will Trigger Complex Water Management Impacts that Affect Farming.	11
E. Farmland Preservation Is a Critical Objective of Land Use Plans of the State of Wisconsin, Rock County and Affected Rock County Towns.	13
F. Existing Rock County Rail Corridors Are Uncongested, Have Ample Capacity and Their Use Avoids the Adverse Impacts on Agriculture, Agribusiness and Local Land Use and Environmental Planning That Would Be Inflicted by GLBT’s Preferred Route Two.	19
CONCLUSION AND REQUESTED ACTION	21

APPENDIX

- EXHIBIT A – FARMLAND PHOTOS
- EXHIBIT B – 1873 MAP OF ROCK COUNTY

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**GREAT LAKES BASIN TRANSPORTATION, INC – AUTHORITY
TO CONSTRUCT AND OPERATE A RAIL LINE IN INDIANA,
ILLINOIS AND WISCONSIN**

STB Finance Docket No. FD 35952

**INITIAL COMMENTS IN OPPOSITION TO THE APPLICATION
AS FILED MAY 1, 2017**

**I. IDENTIFICATION – SAVE OUR FARMLAND, LLC
IS AN AD HOC COALITION OF ROCK COUNTY,
WISCONSIN STAKEHOLDERS.**

Save Our Farmland, LLC is a coalition of Rock County Wisconsin (“Rock County”) business owners, active farmers, community leaders and landowners who will be negatively impacted if the new rail line proposed by the Great Lakes Basin Transportation, Inc. (“GLBT”) were approved as proposed, north of the Illinois/Wisconsin State Line in Rock County, Wisconsin. In Rock County, both GLBT’s “Original Preferred Route” proposed March 7, 2016, and its “Preferred Route Two,” proposed September 20, 2016, if constructed, would impact highly productive, active farming operations and businesses and, depending on their specific locations, homes owned by the members of the Save Our Farmland, LLC who live, work and farm in the Rock County Towns of Beloit, Bradford, Johnstown, La Prairie, Lima, Rock and Turtle. Some 500 acres or more of Wisconsin farmland will be taken out of production and the productivity of

Exhibit A, Petition to Reject GLBT’s Application

thousands of more acres in Rock County will be diminished if this proposal is approved. The “preferred routes” GLBT has selected for the proposed line are inconsistent with all of the land use plans adopted by Rock County and the affected communities in Rock County and their investments in preservation of agricultural lands and their environment.

Members of Save Our Farmland, LLC include Wisconsin grain and livestock farmers, local government leaders, small business owners, retired corporate executives and prominent members of local charitable foundations all from the affected townships in Rock County. They have diverse backgrounds and perspectives, but they share the common concern the GLBT’s Application as filed May 1, 2017, will negatively impact their communities and their businesses.

II. GLBT’s GREENFIELD ROUTING PRIORITY AND FREIGHT ASSUMPTIONS, AS TO ROCK COUNTY, SUPPORT A FINDING OF INCONSISTENCY WITH PUBLIC CONVENIENCE AND NECESSITY.

The GLBT Application filed May 1, 2017, described GLBT’s route selection process, in part, as follows:

When we began planning the GLBT route, we gave special consideration to the potential environmental impact of the project. **We specified an all greenfield route** (with very few exceptions) which avoided all population centers and environmentally sensitive locations while meeting the footprint, gradient and curvature standards described above. **Indeed, our goal was not to displace a single homeowner.** The path to the route we are proposing was not direct, as the environmental record in this proceeding demonstrates. As we learned more about the area GLBT would serve, we made significant changes in the preferred route and identified a number of route alternatives for the Board's Office of Environmental Analysis to consider in developing the Environmental Impact Statement for the project.

[Emphasis added.]¹ GLBT’s greenfield priority for selecting its preferred route is all but admittedly founded on political expedience – “our goal was not to displace a single homeowner”. One of the first and premier lessons of farmland preservation, reflected in policies and regulations of the State of Wisconsin, Rock County and rural Rock County Townships,² is, particularly for highly productive soils and active farms, once disturbed such farmland is lost from farmland preservation forever.

GLBT described its intentions regarding mitigation of impacts on farmland, as follows:

We understand our preferred route will cross parcels of farmland and some landowners have expressed concern about access and water drainage. GLBT will work with all landowners to establish private crossings or alternative access to divided parcels. Cooperating with adjoining landowners and drainage districts, we will address water management issues with culverts, drain tiles and other appropriate measures to minimize flooding. **We have a common interest with landowners** in effective water management, since flowing and ponding water can be just as damaging to roadbed and track structure as it can be to standing crops. Our goal is to be excellent neighbors, good stewards of our land and the land around us, and safe operators.

[Emphasis added.]³ This so-called “common interest” appears to be limited to drainage and complicated or belied by other GLBT statements regarding specifications for the proposed roadbed designed to channel storm water and other run-off onto and through adjacent land. The suggestion of “common interest” is also either naïve or shortsighted in the extreme in underestimating the economic cost of attempting to take and to mitigate

¹ GLBT Verified Statement of James T. Wilson, GLBT App. p. 52.

² See § III., below.

³ GLBT Verified Statement of James T. Wilson, GLBT App. pp. 52-53.

impacts on highly productive farmland and profitable farms, going concerns engaged in livestock and grain operations.⁴

GLBT describes its shift from its Original Preferred Route to GLBT Preferred Route Two - "Rockford East verses West to Milton, WI" – as follows:

Rockford, IL to Milton, WI – The original preferred route submitted on March 7, 2016 . . . was split around Rockford, making the CN and Illinois Railway connections on the west side, and connections with the UP and WSOR on the east side via Boone County. Taking into account the feedback received from the public, the economic development opportunities around the Rockford Airport and the west side of Rockford, alternative routings were investigated including revisiting the concept of a route to the WSOR to the West of Rockford. . . . The new preferred alignment . . . enables the GLBT to make all the railroad connections, removes the railroad from Boone County, IL entirely, **reduces the farmland/greenfield impact in Rock County, WI**, and passes through an industrial area between Beloit and Janesville, WI that does not currently have rail service.

[Emphasis added]⁵ The claimed reduction in farmland/greenfield impact in Rock County is relatively insignificant. With GLBT's Preferred Route Two, still some 500 acres of prime farmland and their active farms will be affected. The alternative route that would significantly reduce potential impact on farmland is the existing Canadian Pacific rail route between Davis Junction south of Rockford and Janesville in Rock County.

Finally, GLBT's Application as filed May 1, 2017 is light on freight volume data and contains no substantive expressions of commitment to, or even interest in, the GLBT route by other railroads and shippers. For Rock County, such data and expressions of commitment or interest are non-

⁴ See, for example, §§ III. B., C. and D., below.

⁵ Docket 35952, EI-25375, September 20, 2016 at Appendix 5.

existent. For example, about all that GLBT seems to have been able to muster to support its proposed route in Rock County is:

Subject to conclusion of interchange agreements, GLBT intends to connect with the following railroad lines (listed from west to east):

Rock County: Wisconsin & Southern, near Milton; Union Pacific and Wisconsin & Southern southwest of Janesville (if traffic justifies; Canadian Pacific, north of Beloit (if traffic justifies)

In other words, GLBT has offered no credible evidence of rail traffic to support its proposed construction and operations in Rock County. Along with the demonstrated negative impacts of GLBT's proposal for Rock County and alternative and under-utilized rail service already available in Rock County, there is nothing in GLBT's Application as filed May 1, 2017 to warrant anything other than a summary finding that GLBT's proposal for Rock County is inconsistent with the public convenience and necessity.

III. ADVERSE IMPACTS ON ROCK COUNTY FARMLAND AND FARMS REQUIRE FINDING GLBT'S ROUTE INCONSISTENT WITH THE PUBLIC CONVENIENCE AND NECESSITY.

A. GLBT's Preferred Route Two Will Directly and Indirectly Adversely Impact Highly Productive Cropland and Livestock Farms and Related Agribusinesses.

We are not talking about just any farmland. Rock County has some of the best farmland in Wisconsin.⁶

Rock County, Wisconsin is home to more than 1,500 farms and over 350,000 acres of highly productive farmland.⁷ In 2015, Rock County led

⁶ Docket FD 35952, filing EI-24279, Wisconsin Department of Agriculture, Trade, and Consumer Protection, "Comments on Draft Scope of Study," dated June 9, 2016, at p. 3.

⁷ See 2012 Census of Agriculture – County Data, 234 Wisconsin, Table 1, County Summary Highlights, USDA, National Agricultural Statistics Service.

the State of Wisconsin in production of soybeans, producing 5.3 million bushels on 97,200 acres. Rock County is also one of the top five corn producing counties of the State, producing 25,357,000 bushels of corn in 2015.⁸ In addition to valuable cropland acres, several successful livestock farms are thriving in Rock County. As a result, Rock County's valuable farmland has led to high rental rates for non-irrigated cropland that well exceed the state average. In fact, the estimated average market value per farm in Rock County is almost \$1.3 million.⁹

In Rock County, GLBT proposes a 200' wide right-of-way corridor for approximately twenty miles from the Illinois-Wisconsin state line to Milton, Wisconsin, slicing through productive farmland and farms. GLBT's proposal would take some 500 acres of prime farm land out of production, separating and dividing existing farms and livestock pastures and, as described in more detail below. GLBT's proposal would drastically increase the challenges of farming the remaining farmland bisected by the proposed GLBT right-of-way. In addition to the direct loss of farmland, the ripple effect of placing a right-of-way in the location of GLBT's Preferred Route Two will cause severe disruption to ongoing farming operations on thousands of additional acres because the movement of equipment and

⁸ See Wisconsin Ag News – 2015 Soybean County Estimates, United States Department of Agriculture National Agricultural Statistics Service, *and* Wisconsin Ag News – 2015 Corn County Estimates, United States Department of Agriculture National Agricultural Statistics Service.

⁹ See 2012 Census of Agriculture – County Data, 234 Wisconsin, Table 1., County Summary Highlights, USDA, National Agricultural Statistics Service.

animals from fields and pastures on one side of the right-of-way to the other will be greatly impaired or eliminated.

This loss of farm productivity, in addition to the loss of productive acres themselves, will impact the preservation of farmland and active farms – many of them family owned and operated farms – along the proposed rail corridor.

Directly negatively impacting some 500 acres of highly productive farmland in Rock County and indirectly negatively affecting thousands of additional acres to the extent proposed by GLBT is not consistent with public convenience and necessity.¹⁰

The direct and indirect economic impacts to agricultural, agribusiness and related industries and businesses weighs in favor of the Board's finding that extending GLBT's proposed new railroad into Rock County is inconsistent with public convenience and necessity.

Compared to "reasonable and feasible alternative routes,"¹¹ GLBT's proposed route (either its Original Preferred Route or Preferred Route Two) in Rock County, will negatively affect agricultural productivity. Existing farming operations and other agribusinesses will be split by GLBT's proposed corridor in Rock County. Suitable and safe ways for large farming

¹⁰ The draft EIS outline published in the March 18, 2016 Federal Register, Section 8. "Geology and Soils" describing and measuring effects on "prime farmland grossly understates the farmland that is in this part of Rock County. See Fed Reg Vol. 81, No. 53, p. 14932, March 18, 2016.

¹¹ Fed Reg Vol. 81, No. 53, p. 14931, March 18, 2016.

equipment to get across the corridor to connect farm operations or deliver farm products to storage or processing are largely unavailable.

B. GLBT's Preferred Route Two in Rock County Will Impede the Movement of Livestock and Agricultural Equipment and Will Increase the Use of Local, County and State Roadways for Implements of Husbandry.

“Navigating”¹² within Rock County on Wisconsin roadways is critical to the health and efficiency of the local agricultural economy because farming involves the use and safe and efficient movement of livestock, crops and large and specialized agricultural equipment.

Wisconsin road weight limits and applicable width limits for farm equipment, known under Wisconsin law as “implements of husbandry,” are generally 15% higher than standard road weight limits and generally provide no limits on equipment widths, as long as certain lighting requirements are met.¹³ This state policy decision was made to ensure that farm machinery could be operated legally on these roadways in order to support the State’s essential agricultural economy.

However, the placement of the proposed rail right-of-way could greatly increase the frequencies and the distances operated by this equipment in the affected areas in Rock County on local, county and state

¹² As published in the Federal Register, the draft scope of study for the EIS for the GLBT proposal includes a proposed analysis of “navigation” that appears to be targeted at waterway navigation only. We think the “navigation” concept has a different relevance in a sea of active farming. See Fed. Reg. Vol. 81, No. 53, p. 14932, March 18, 2016.

¹³ Wis. Stat. ss. 348.15 (3g) and 348.05 (2) (a) (2016).

roads because farmers will be forced to move these implements from one side of the right-of-way to the other only at constructed and maintained crossings.¹⁴

The Board's consideration of public convenience and necessity needs to include weighing all of the potential economic and public safety effects of increased use of town, county and state roads in the areas surrounding the proposed rail line in Rock County if oversized and heavy farm implements must be moved farther and with more frequency to cross the rail line to access farmland bisected by the new rail line. This also requires consideration of the safety implications of creating rail crossings that can accommodate the oversized, overweight, wide and long farm implements commonly used on local farms for planting, harvesting and application of nutrients, pesticides and herbicides.

These adverse safety impacts and related costs from disruption of current patterns for, and increasing exposure of other traffic on local, County and State roadways to, movements of implements of husbandry on those roadways, arising from GLBT's proposed route, would be largely or entirely avoided by use of the capacity of existing, under-utilized rail routes in Rock County.

¹⁴ The concept of on-farm private crossings which GLBT seems to suggest raises a whole range of additional safety and economic questions.

C. The Location, Placement and Management of GLBT's Preferred Route Two in Rock County Will Affect Critical Farm Nutrient Management Plans.

Wisconsin Department of Agriculture, Trade, and Consumer Protection ("DATCP") states: "Nutrient management is a way for Wisconsin farmers to ensure that their crops get the right source of nutrients at the right rate, time and place to match crop needs and minimize nutrient losses from fields."¹⁵ Essentially, a farmer's "nutrient management plan" is a complex environmental and productivity management document that is designed to account for all farm and field activities that affect nutrient needs of the crops and nutrient losses during crop rotation or livestock production.

Soil type, land slope, crop rotations and residual soil nutrients are analyzed along with the consideration of the application of manure and commercial fertilizers when a plan is prepared. Each plan is designed carefully to minimize the risks of contaminating groundwater and surface waters that could result from runoff from cropland and livestock areas.

Nutrient management planning involves extensive, site-specific analysis. GLBT's proposed route slicing through highly productive farmland and farms will trigger changes that will have to be taken into account in revisions to existing nutrient management plans due to landscape

¹⁵ See http://datcp.wi.gov/Farms/Nutrient_Management/.

changes including changes to land slope, increased wetland areas and impacts to fields that are managed with drain tile.

Tile drainage systems remove water from the subsurface of wet cropland. These systems involve a network of underground pipes that “drain” the wet soil, thereby making the land optimal for crop growth. GLBT’s proposed route will disrupt these tile systems on agricultural lands and, therefore, affect nutrient management planning on affected cropland.

In addition, the vegetation in the proposed rail right-of-way will need to be carefully managed. Use, or non-use, of pesticides, herbicides and other practices used to control invasive species and other vegetation in the proposed right-of-way will have to be managed to avoid negative impacts to the environmental health and nutrient management planning of adjacent cropland and livestock farms.

These adverse impacts and costs arising from disruption to existing farm nutrient management plans by GLBT’s proposed route would be largely or entirely avoided by use of the capacity of existing under-utilized rail routes in Rock County.

D. Changing the Existing Land Grade Adjacent to the Rail Line Will Trigger Complex Water Management Impacts that Affect Farming.

Construction of GLBT’s proposed new rail line in Rock County will change the existing grade of the land adjacent to the new line and rail

corridor. This grade change will affect water management and farming near GLBT's proposed new rail corridor in several ways.

First, changes to the grade will impair or eliminate farm drainage ways, which will result in soil loss, erosion, potential flooding of agricultural land and lost farm productivity in an area that far exceeds the footprint of the proposed rail corridor.

In addition, grade changes will negatively alter the function of existing area wetlands through which the corridor passes.

Finally, if new wetlands are created, their creation will result in the loss of farmland and the impairment of the productivity of adjacent farmland, as farming in wetland areas is difficult and may be prohibited by law under some circumstances.

Attached Exhibit A displays several photos of some of the existing farmland that is adjacent to the proposed rail right-of-way and could be affected as described above. In assessing land acquisition and related mitigation costs, it was incumbent on Applicant GLBT to identify specific wetlands that will be created along the proposed route in Rock County using established wetland delineation processes as approved by the Wisconsin State Department of Natural Resources and the United States Army Corps of Engineers.

The adverse impacts the proposed GLBT corridor will have on farm drainage ways, soil loss, erosion, potential flooding of agricultural land, the

function, size and location of existing wetlands and the potential to create new wetlands in current non-wetland agricultural lands would be largely or entirely avoided by use of existing under-utilized rail routes in Rock County.

E. Farmland Preservation Is a Critical Objective of Land Use Plans of the State of Wisconsin, Rock County and Affected Rock County Towns.

GLBT's Preferred Route Two from the Illinois-Wisconsin state line to Milton, Wisconsin, cuts through seven (7) townships in Rock County: Beloit, Bradford, Johnstown, La Prairie, Lima, Rock and Turtle. Rock County has adopted the *Rock County Agriculture Plan*, which takes into account the local environment and is specifically designed to preserve and sustain agricultural resources in Rock County. In addition, Rock County towns have engaged in land use planning and adopted comprehensive land use plans that prioritizes protecting, preserving and managing farmland and agricultural resources. These local land use decisions and plans must be taken into account in determining whether or not GLBT's Application, as filed and as it impacts farmland in Rock County and the affected Townships is consistent or not consistent the public convenience and necessity. As filed, the current GLBT Application fails to mention, let alone take into account, these land use plans.

Rock County. Rock County has adopted the *Rock County Agriculture Plan – 2013 Update*, which serves as Chapter 13 of the *Rock*

County Comprehensive Plan: 2035. This plan is focused on farmland preservation. Farming and associated agribusiness is such an integral part of the landscape and the community identity that Rock County has an “Agriculture Vision Statement” which provides, in part,

“Preservation of the County’s agricultural, natural and cultural resources and orderly, responsible, and appropriate growth and development is vital in achieving the end. Thus, the county will utilize thoughtful, comprehensive and participatory planning practices that balance private property rights with communal well-being, local authority with regional oversight, and preservation with growth, to ensure a stable, vibrant, diverse, and sustainable community for present and future County residents.” *See id.* at p. 13.

The plan establishes defined goals, objectives and policies aimed at farmland preservation and also links this plan with other relevant plans and regional polices, timelines and indicators.

The GLBT proposal is not consistent with the above-stated objectives of the *Rock County Comprehensive Plan: 2035*.

Policies articulated in the Rock County land use plan, emphasizing preservation of agricultural land and farming are reflected in complementary plans adopted by Rock County Townships (referenced below). Although the Towns of Beloit and Rock, affected by GLBT Preferred Route Two, include urban and industrial areas, they too have significant agricultural areas subject to farmland preservation policies of Rock County and those Towns.

Town of Clinton.¹⁶ Although GLBT's Preferred Route Two avoids the Town, the Town's commitment to farmland preservation is typical of the Towns that are affected.

The Town of Clinton is located on the Illinois-Wisconsin border and shares its southern boundary with Boone County, Illinois. On October 27, 2009, the Town of Clinton, in cooperation with the Rock County Planning, Economic & Community Development Agency, adopted the *Town of Clinton Comprehensive Plan 2035*.¹⁷ As stated in the plan, "The plan should be the basis for reviewing future developments, constructing transportation improvements, and extending public services." *See Town of Clinton Comprehensive Plan 2035*, pp. 1-2. The plan contains an entire chapter devoted to preserving agricultural, natural and cultural resources. Specifically, the plan highlights as a goal to "preserve, protect, and assist in the responsible management of all agricultural resources identified within the Town of Clinton." *Id.* p. 3-1.

"Farmland ... provides considerable revenue to local government while requiring minimal public services in return. In addition to the fiscal costs of allowing development in productive agricultural areas, it is otherwise important to maintain critical masses of prime agricultural land in the Town, to make farming a profitable career, and to supplement the nation's food supply while contributing to the Town's economic base. ... The best practice is to preserve farmland when possible."

Id. p. 3-2.

¹⁶ Exhibit B, attached, is a 1873 map of Rock County that provides the locations of the Rock County townships. Curiously enough, the map also includes most of the rail lines that exist to the present day.

¹⁷ Find Rock County Town Plans at <http://www.co.rock.wi.us/planning-town-plans-zoning>.

There is no evidence that the GLBT's current proposal makes any attempt to be responsive to the Town of Clinton Plan 2035.

Town of Turtle. The Town of Turtle is immediately west of the Town of Clinton and is affected by GLBT's Preferred Route Two. Among the goals of the Town of Turtle Comprehensive Plan is to "Preserve, protect, and assist in the responsible management of all agricultural resources identified within the Town of Turtle" with the objectives to: "Clearly designate Exclusive Agricultural Areas, and preserve them via land use and zoning decisions at the Town level"; and (b) "Protect the profitability of farming, by discouraging rural-urban land use conflicts and by preventing the imposition of urban development into prime agricultural areas".

Town of Bradford. The Town of Bradford shares its southern border with the Town of Clinton and is bordered by the Town of Johnstown on the north and La Prairie on the west. On November 18, 2009, the Town of Bradford adopted, *Comprehensive Plan Bradford 2030*. As stated in this land use plan,

"Developing this plan sends a clear message that the Town of Bradford wishes to act proactively – to set its own ground rules for the types of development that will benefit the Town, maintain a rural atmosphere, and provide flexibility for landowners in making future decisions regarding the use of their land."

Comprehensive Plan Bradford 2030, p. 1-2.

Chapter 7 of the plan is devoted to the Town's agricultural, natural and cultural resources. Similar to the Town of Clinton plan, the Town of Bradford plan places a high value on the preservation of farmland within

the township. The plan's stated "Agricultural, Natural, & Cultural Resources Vision" (*emphasis added*) for what the Town should look like in 2025 states in relevant part, "Farming continues to be productive and economically viable sources of income for individual families and the community as a whole." *Id.* p. 7-1.

The GLBT proposal makes no accommodations for placement of the rail line that is complementary to the Town of Bradford land use plan.

Town of La Prairie. The Town of La Prairie is immediately west of the Town of Bradford and is affected by GLBT's Preferred Route Two. On June 10, 2009, the Town of La Prairie adopted, *Town of La Prairie Comprehensive Plan 2035* listing as its goal to "Preserve, protect and responsibly manage all agricultural resources identified in this and other plans that pertain to the Town of La Prairie". *Id.* p. 3-1. The Town of La Prairie is largely agricultural: "Agricultural pursuits are a thriving and dominant land use in the Town". *Id.* p. 3-2. Also:

The majority of the farms in La Prairie are family operated farms. There are also a number of farms within the Township that produce such specialty crops as mint, beets, soybeans, peas and sweet corn. Seed corn production giants such as Pioneer, Syngenta and Northrup King all operate test plots in the Town.

Id. p. 3-3.

Town of Johnstown. The Town of Johnstown is immediately north of the Town of Bradford and, similarly, has adopted a comprehensive land use plan that identifies preservation of farmland as a community goal. As stated by the Town of Johnstown in its plan, "The quantity and quality of

agricultural, natural, and cultural resources in a community directly affects and influences the quality of life for its residents.” *Town of Johnstown Comprehensive Plan*, p. 3-1.

“The Town of Johnstown is largely characterized by agricultural land. This resource serves as the livelihood for many Town residents and simply as an outstanding setting in which to live for many others. Either way, it is the one most important resource existing in the Town and is one that should be carefully managed. ... For this reason, this topic is probably the most important issue for the Town of Johnstown to consider for planning purposes.”

Id. p. 3-2. The GLBT proposal makes no attempt to mitigate the impact of the proposed rail line on lands within the Town of Johnstown.

Town of Lima. The Town of Lima, located immediately north of the Town of Johnstown, adopted the *Town of Lima Comprehensive Plan 2035* on June 24, 2009. The town’s plan is very similar to those of the three other townships described above and through which the proposed GLBT rail line would run. However, the Town of Lima’s vision statement seems to also aptly capture the emotion felt by the people in this town with regard to the non-economic value that they place on agricultural land, open space and this rural community’s socio-economic identity:

“The Town of Lima cherishes the agricultural, natural, and cultural resources that provide it an identity, and is committed to maintaining this identity through responsible and comprehensive planning reliant on sound principles and citizen participation. Planning in this manner will ensure preservation of agricultural and open space lands, and allow for appropriate growth and development, balancing the individual property rights of the Town’s residents with the Town’s collective well-being, ultimately ensuring a continued high quality of live [*sic*] for current and future Town residents.”

Town of Lima Comprehensive Plan 2035, p. 1.

As filed GLBT's Application does not demonstrate any effort to mitigate the effects to the rural landscape and farmland preservation goals embedded in the Town of Lima's land use plan.

Essential Respect for and Consideration of Local Planning. As evidenced by the careful land use planning and resultant zoning related to farmland preservation adopted by the County and these townships, it is incumbent on the Board to fully consider and carefully evaluate how GLBT's Application as filed will adversely affect Rock County's and these towns' expressed desire and commitment to preserving farmland, and maintaining a robust agricultural economy and rural community. Inconsistency with public policy of Rock County and these Townships support for farmland preservation is entirely avoided by use of existing under-utilized rail routes in Rock County, as an alternative to GLBT's proposed route. In this light, GLBT's Application as filed, without addressing these issues, warrants a finding that GLBT's proposed route in Rock County is inconsistent with the public convenience and necessity.

F. Existing Rock County Rail Corridors Are Uncongested, Have Ample Capacity and Their Use Avoids the Adverse Impacts on Agriculture, Agribusiness and Local Land Use and Environmental Planning That Would Be Inflicted by GLBT's Preferred Route Two.

There are three active, but under-utilized, freight rail corridors that currently provide freight rail service in Rock County and link the area with the Mississippi River, the Great Lakes and other regions: (1) The Class II

Wisconsin and Southern Railroad (“WSOR”), owned and operated by Watco LLC; (2) The Class I Union Pacific Railroad (“UP”), running through the Cities of Evansville and Janesville, and the Village of Clinton; and (3) the Canadian Pacific Railway (“CP”), which operates on tracks running from Davis Junction, south of Rockford (near GLBT’s Preferred Route Two proposed interchange with CP at proposed MP 195), through the Cities of Beloit and Janesville. These rail corridors, because they are already approved and in use, must be explored as the first option for improvement or expansion of freight rail connections. Use of these rail lines, and their improvement if warranted by freight volumes, is the better alternative to the GLBT’s proposed new rail corridor, which would slice through acres of some of the United States’ most productive and valuable agricultural land.

The only bases GLBT’s Application as filed May 1, 2017 advances for STB’s granting of the application are: (1) a recitation of the volume of trains and rail traffic moved through the Chicago area (Application, p. 5); (2) an assertion that GLBT’s proposal will “help alleviate endemic rail traffic delays and congestion in the Chicago area (Application, p. 10); and (3) various assumptions about volumes that will be interchanged with GLBT (Application, p. 9 and Exhibits D, D-1 and D-2). GLBT’s own Chief Commercial Officer describes his estimated volume of interchange freight as “theoretical” (Application, p. 57). No statements of shippers or other

interchange railroads are offered in support of the Application or the traffic level assumptions GLBT asserts.

All of GLBT's estimates of traffic on proposed MP 195 to MP 244 of GLBT's Preferred Route Two (Application Exhibit D-1) are well within the capacity of the existing rail lines in Rock County. Connection of GLBT's Preferred Route Two with the Canadian Pacific line near proposed MP 195 in the Rockford area completely avoids any need for acquisition of new right-of-way in Rock County.

CONCLUSION AND REQUESTED ACTION

Every aspect of GLBT's "explanation of the purposes of the proposal and public convenience" in response to 49 CFR § 1150.4 and otherwise throughout GLBT's Application filed May 1, 2017, rests upon alleviation of rail congestion in the Chicago area. That congestion does not extend to Rock County which has ample existing rail capacity to support present and future rail traffic to, from and through Rock County, including trains that may be generated by construction of GLBT route south of the Illinois-Wisconsin state line. GLBT's Original Preferred Route in Rock County and, to a slightly lesser but irrelevant extent, GLBT's Preferred Route Two in Rock County demonstrably and substantially, negatively impact highly productive farmland and farms in contravention of farmland preservation policies and regulations of the State of Wisconsin, Rock

County and the affected Towns, and relevant County and local zoning which supports those policies.

As to construction in Rock County, GLBT's Application is not even close to sufficient to raise a presumption of consistency with the public convenience and necessity, much less a *prima facie* case. Any such presumption is rebutted by evidence of the adverse impacts of the GLBT's Proposed Route Two in Rock County and presence of under-utilized rail capacity to serve the present and future needs of Rock County.

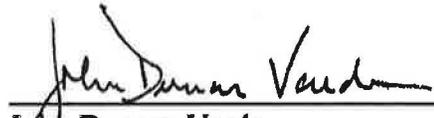
Accordingly, Save Our Farmland requests that the Board enter an order finding that GLBT's proposed route north of proposed MP 195 (CP-Rockford interchange) is inconsistent with the public convenience and necessity.

Alternatively, Save Our Farmland requests that the Board designate a separate sub-numbered proceeding in FD 35952 to address GLBT's proposed route and construction in Rock County, Wisconsin (*i.e.*, north of proposed MP 195), specifically requiring GLBT to explain: (a) why Canadian Pacific's route between GLBT's proposed interchange with Canadian Pacific at or near MP 195 and CP's interchange with WSOR in Janesville, Rock County, is not capable of serving freight volumes projected by GLBT; and (b) why trackage rights, haulage agreement, pricing authority, inter-terminal switching or other similar means for use of the Canadian Pacific route to interchange with WSOR and other railroads at or

near Janesville is not preferable to construction of GLBT's Preferred Route

Two through productive farmland and farms in Rock County.

Dated this 5th day of June, 2017.



John Duncan Varda
Ron W. Kuehn
Jordan K. Lamb
Attorneys for Save Our Farmland, LLC

DeWitt Ross & Stevens s.c.
Two East Mifflin Street, Suite 600
Madison, WI 53703
Tel: 608-255-8891
Fax: 608-252-9243
jdvarda@dewittross.com
rwk@dewittross.com
jkl@dewittross.com



Exhibit A, p. 1
Initial Comments FD 35952
Save Our Farmland, LLC

Exhibit A. Petition to Reject GLBT's Application



Exhibit A, p. 2
Initial Comments FD 35952
Save Our Farmland, LLC

Exhibit A. Petition to Reject GLBT's Application



Exhibit A, p. 3
Initial Comments FD 35952
Save Our Farmland, LLC



Exhibit A, p. 4
Initial Comments FD 35952
Save Our Farmland, LLC

Exhibit A, Petition to Reject GLBT's Application



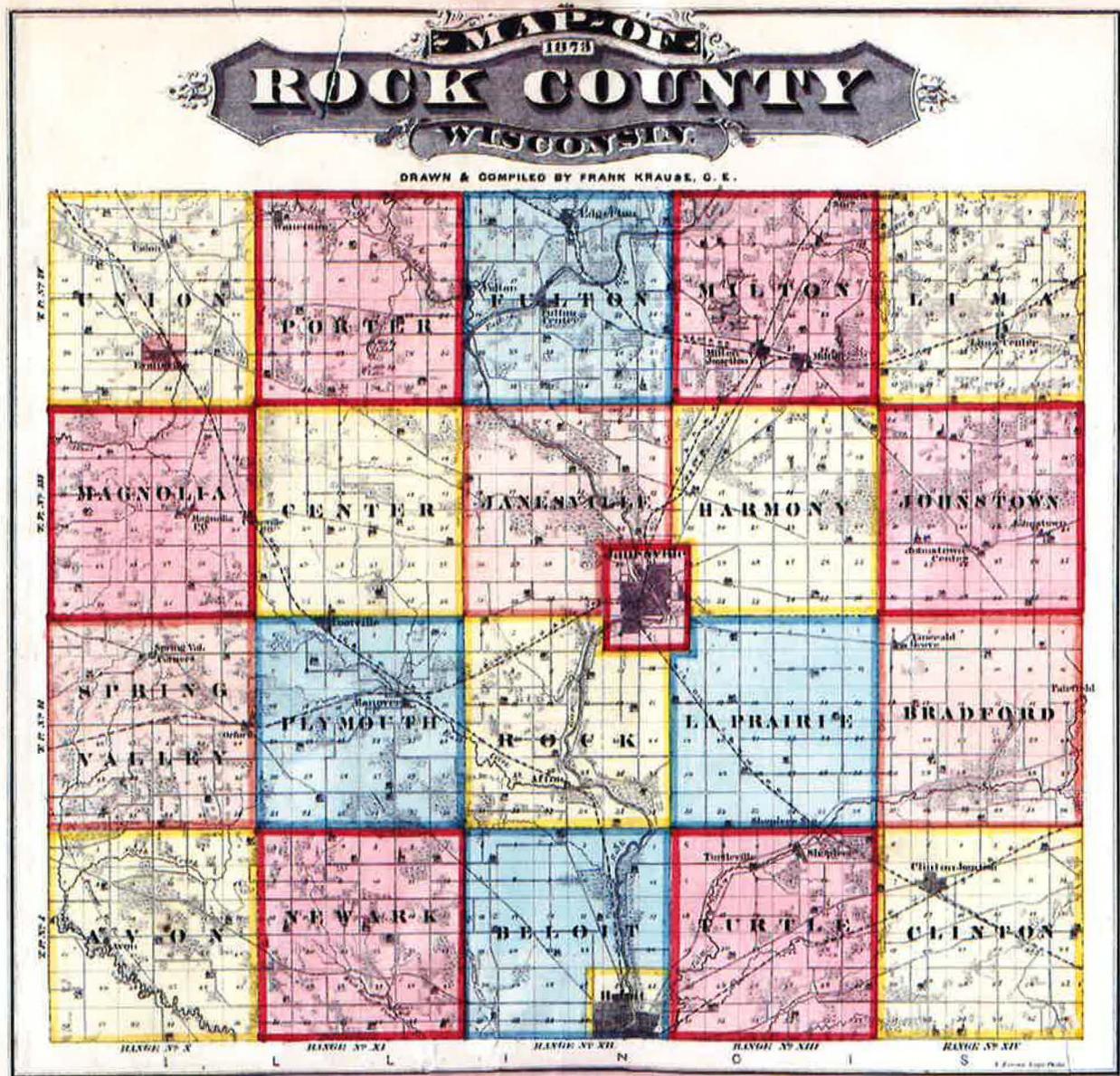
Exhibit A, p. 5
Initial Comments FD 35952
Save Our Farmland, LLC

Exhibit A. Petition to Reject GLBT's Application



Exhibit A, p. 6
Initial Comments FD 35952
Save Our Farmland, LLC

Exhibit A. Petition to Reject GLBT's Application



Rock County as it was in 1873.

Exhibit B
 Initial Comments FD 35952
 Save Our Farmland, LLC

Exhibit A, Petition to Reject GLBT's Application