COMMONWEALTH OF PENNSYLVANIA
BEFORE THE BOARD OF PROPERTY

BUFFALO & PITTSBURGH RAILROAD, INC. Plaintiff	:	
vs.	:	Docket No. BP-2003-0003
COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA GAME COMMISSION Defendant	:	
and	:	
COUNTY OF ELK, Intervenor	:	

ADJUDICATION AND ORDER

HISTORY

This matter is before the Board of Property on a Complaint entitled Interest in Title to Land filed on June 12, 2003 by Buffalo & Pittsburgh Railroad, Inc. (B&P) against the Pennsylvania Game Commission (PGC).[1] In its Complaint, B&P averred that it owned a right-of-way and operated a railroad through PGC Gamelands No. 44 in Elk County. B&P further averred that PGC erroneously granted a license for a recreational trail that included part of its right-of-way. B&P further alleged that the Trail's encroachment on its right-of-way prevents it from safely operating and maintaining its railroad.

PGC filed an answer to the Complaint on June 25, 2003 in which it denied that the Trail encroached upon the B&P right-of-way or that the Trail impeded the safe operation of the railroad.

B&P filed and served interrogatories on July 14, 2003, which PGC answered on July 24, 2003.

On August 20, 2003, the County of Elk (Elk) filed a Petition to Intervene averring that it was the current licensee of the rails-to-trails program. B&P filed an objection and answer on September 22, 2003. Elk filed a reply on October 3, 2003.

On December 15, 2003, the Board issued a Memorandum and Order granting the County's Petition to Intervene and directing it to file an answer, which it did on December 29, 2003.

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[1] Prior to this action, B&P had filed a Complaint in Equity to Quiet Title and a Motion for a Preliminary Injunction in the Court of Common pleas of the Fifty Ninth Judicial District in *Buffalo & Pittsburgh Railroad, Inc. v. The Headwaters Charitable Trust, Elk County Commissioners, Pennsylvania Game Commission, Tri-County Rail to Trails Association,, Pennsylvania Department of Transportation d/b/a/ Penn Dot and HRI, Inc.* B&P sought to enjoin the defendants from improving 1.8 miles of an abandoned railroad grade that runs parallel to its tracks. PGC filed preliminary objections on the grounds that the Board of Property had jurisdiction in the matter. Thereafter, B&P filed the instant action with this Board.

On April 28, 2004, B&P filed a motion for a hearing date. The Board issued an order and notice of hearing on June 23, 2004, establishing a schedule for the filing of pre hearing statements and scheduling a hearing for September 29, 2003. The hearing was held on that date and on October 13, 2004 in Harrisburg PA. Andrew Kinball, Esquire, represented B&P. Bradley C. Bechtel, Assistant Counsel, represented PGC and Thomas G. Wagner, Solicitor, represented Elk County.

Following the hearing, the Board issued an order which gave Elk additional time to depose additional witnesses and directed the filing of simultaneous post-hearing briefs within 45 days of the deposition and reply briefs 20 days thereafter. On January 26, 2005, Counsel Wagner notified the Board that no depositions or further evidence would be offered. In accordance with Counsel's letter, the parties simultaneously filed post-hearing briefs on March 14, 2005 and reply briefs on April 1, 2005.

The matter is now ripe for adjudication.

FINDINGS OF FACT

Parties

1. B&P is a Delaware corporation with its principal place of business at 1200 C, Scottsville Road, Suite 200, Rochester, New York14624 and doing business at 201 North Penn Street, Punxsutawney, Pennsylvania 15767. (Complaint/Answer ¶1)

2. PGC is an independent administrative commission with its principal place of business at 2001 Elmerton Avenue, Harrisburg, Pennsylvania 17110. (*Id.*¶ 2)

3. Elk is a political subdivision of the Commonwealth of Pennsylvania with its principal address PO Box 448, Main Street, Ridgeway, Pennsylvania 15853. (Petition to Intervene)

4. The Commonwealth, through PGC, is the owner of certain lands in Elk County, known as State Gamelands No. 44. Portland Oil & Gas Co. (Portland) conveyed the land at issue here to PGC by deed dated December 26, 1928 recorded in Elk County Deed Book 90 at page 188 and a deed from Headwaters Charitable Trust dated August 5, 1997 and recorded in Elk County Deed Book 353 at page 23. (Joint Exhibits E and F)

5. B&P operates and maintains an active railroad, which runs 280 miles from Buffalo, New York to New Castle, Pennsylvania on rights-of-way and tracks owned and operated by B&P. B&P's tracks in Elk County run through part of PGC Gamelands No. 44. (N.T. 34)

6. Adjacent to the B&P right-of-way is a second right-of-way last operated as an active railroad by Penn Central Transportation Company ("Penn Central"). Penn Central formally abandoned the right-of-way and removed its tracks and other property in the 1970s. (B&P Exhibit 7)

The Controversy

7. On February 12, 1994, PGC entered into an Agreement with the Tri-County Rails to Trails Association, a Pennsylvania nonprofit corporation, granting to the Association the right to maintain the abandoned Penn Central right-of-way from Brockway to Ridgeway as a recreational trail for 25 years and thereafter from year to year, with each party retaining the right to terminate it after 90 days' notice. (County Exhibit 4)

8. On November 18, 1996, PGC granted a License for a right-of-way to Headwaters Charitable Trust, a Pennsylvania nonprofit organization with an office in Clearfield Pennsylvania, to maintain the abandoned Penn Central right-of-way as a recreational trail. (County Exhibit 5)

9. On March 22, 2001, Headwaters Charitable Trust assigned the license to Elk County for the purpose of developing the trail for public use under the Rails-to-Trails program. PGC subsequently revoked the license of Headwaters Charitable Trust.[2]
(County Exhibit 6)

10. Elk contracted with HRI, Inc., a construction contractor, to make improvements to a 1.8-mile section of the abandoned right-of-way that shares a common boundary with B&P's right-of-way. (Complaint/Answers ¶s 6, 7)

11. B&P objected to the conversion of the 1.8 miles of the abandoned right-of-way based on its property rights and concern for the safety of the public owing to the proximity of the Trail to its right-of-way. (N.T. 35, 308-09)

[2] PGC revoked the license in a letter dated October 13, 2002. (Joint Exhibit D) The revocation was averred and admitted in the Complaint and Answer. Elk averred that the revocation was improper in its answer (¶22), but did not plead new matter. Further Elk did not present any evidence at the hearing concerning the revocation. Nonetheless, Elk requests in its post hearing brief that the Board find that PGC failed to establish a basis for revoking the license. In various filings, PGC has averred that it is renegotiating the license with Tri-County Rails to Trails but no evidence was offered at the hearing. Based on the foregoing, the Board finds that PGC's revocation of the license is not at issue in this proceeding.

12. B&P's right-of-way is derived from the following:

a. A document titled "Bond of Indemnity, Agreement for Right of Way" between J.S. Hyde, et al. and Rochester & Pittsburgh Railway Company dated March 14, 1882. (Joint Exhibit A)

b. A Quitclaim Deed from Portland Lumber Company to Buffalo Rochester and Pittsburgh Railroad dated June 11, 1917 describing the right-of-way by metes and bounds. (Joint Exhibit C).

c. Track maps of the Buffalo Rochester and Pittsburgh Railroad dated 1917 filed with the Interstate Commerce Commission (ICC) describing the right-of-way of the railroad by metes and bounds. (Joint Exhibit G).

13. The right-of-way to Rochester and Pittsburgh Railroad in 1882 was recorded in Elk County Miscellaneous Book B, page 384. It granted "a right-of-way through over and across so much of our Portland lands, hereinafter described, as may be necessary for the construction and maintenance of said Railroad, such railroad to be hereafter located by said Company, and such Right of Way to be used and enjoyed by said company, its Successors and assigns, so long as said Railroad is maintained and operated...." (Joint Exhibit A)

14. In consideration for the right-of-way, the Rochester and Pittsburgh Railroad agreed to pay for the timber that it cut in construction, build a passenger and freight station on the grantors land, and allow access to cross the right-of-way. (*Id.*)

15. The Penn Central right-of-way was originally conveyed by Joseph S. Hyde to the Ridgeway and Clearfield Railroad Company by deed dated August 19, 1884 recorded in Elk County Deed Book 28, page 303. (Joint Exhibit B)

16. The 1884 deed granted the Railroad "full right and privilege of laying down, erecting and constructing a railroad with one or more tracks as [railroad] may deem necessary" describing the right-of-way by metes and bounds, and bounded by the right-of-way of Rochester and Pittsburgh Railway Company and the lands of Joseph S. Hyde et al. (Joint Exhibit B)

17. The June 11, 1917 quitclaim deed from Portland Lumber Company granted a fee to Buffalo, Rochester and Pittsburgh Railway Company (predecessor to B&P) for a right-of-way north of the Penn Central right-of-way; the deed describes the right-of-way by metes and bounds and bounded by the right-of-way of the Penn Central right-of-way. (Joint Exhibit C)

18. In 1917 and 1918, B&P and Penn Central filed valuation maps with the I CC showing tracks of the two railroads in Elk County. The railroads track maps show the tracks of each railroad outside of the right-of-way boundary of the adjacent railroad. (Joint Exhibit G, P&B Exhibit3, County Exhibit 2)

19. Since Penn Central abandoned the right-of-way and removed its tracks in the 1970s B&P used the corridor, including culverts and slopes, to maintain the tracks and adjacent area for railroad operations. (B&P Exhibit 7, N.T. 170-71)

20. The railroad grade was constructed by a cut into a hillside leading down to the Clarion River; in addition to the tracks, the cuts were designed to provide areas for culverts, maintenance and operations. B&P tracks are bordered on north by a slope leading to the bank of the Clarion River and on the south by the recreational Trail. (N.T. 278)

21. The 1928 Portland Deed to PGC references both the 1882 and 1917 conveyances affirming "all rights-of-way... and privileges of the Buffalo Rochester and Pittsburgh Railroad... (except insofar as part of said rights of way were abandoned or surrendered upon relocation of the railroad and the granting of other rights-of-way in their stead)". (Joint Exhibit E)

22. The recreational Trail was constructed within the Penn Central right-of-way. (Joint Exhibits B, C and G)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. Section 1207 of the Administrative Code of 1929, Act of April 1, 1929, P.L. 177, as *amended,* 71 P. S. § 337.

2. The B&P right-of-way in the 1.8 mile section where it shares a common boundary with the recreational Trail is delineated in the metes and bounds of the 1917 Quitclaim Deed from Portland. Therefore, PGC has not infringed upon the B&P right-of-way by granting a license to build a trail on the abandoned Penn Central right-of-way.

3. The evidence does not establish that PGC has unreasonably interfered with the rights of the B&P to conduct maintenance operations on lands adjacent to its right-of-way by issuing a license to Elk for the development of a recreational Trail on the abandoned Penn Central right-of-way.

DISCUSSION

This case concerns part of an abandoned railroad grade in Elk and Jefferson Counties that has been converted to an 18-mile recreational trail known as the Clarion River/Little Toby Creek Trail running from Brockway in Jefferson County to Ridgeway in Elk County. At issue is a 1.8-mile section of the Trail which shares a common boundary with the B&P right-of-way near the Ridgeway terminus. At this 1.8-mile section both rights-of-way parallel the Clarion River. The Trail and the B&P grade are located on a cut into the hillside. On the south side of the Trail (the Penn Central right-of-way) a steep bank leads to State Route 949. The Trail on the north side shares a boundary with the B&P right-of-way. On the north side of the B&P right-of-way a steep slope leads to the Clarion River. (N.T. 278-79)

B&P in this action is seeking a determination as to whether its right-of-way includes land on which the recreational Trail has been built, and thus, whether PGC erroneously granted a license for the Trail. It asserts that PGC infringed upon its right-of-way by issuing a license to construct and maintain a recreational trail on the adjacent former Penn Central right-of-way former Penn Central Railroad.

B&P offered the testimony of David Collins, President of B&P, Gary L. Thorp, a surveyor, William Gentilman, B&P Property Manager, David Baer, B&P Vice President and chief engineer, and Danny Parker Gilbert, a railroad safety consultant.

Mr. Collins testified regarding B&P railroad operations in the 1.8-mile section and B&P's concern with the proximity of its tracks to the recreational Trail. Mr. Thorp provided a detailed explanation of survey drawings he prepared showing B&P and Penn Central rights-of-way. He testified that in preparing the maps he examined deeds further north and south of the

1.8 mile stretch at issue showing B&P's right-of-way was 30 feet from the center line of the tracks on either side. (N.T. 90) Further, he testified that B&P needs at least 30 feet from the centerline of its track for the safe operation of its track and railcars. Mr. Gentilman testified that in many locations an 11 foot distance separates the B&P near rail and the Trail. (N.T. 134-35) Mr. Baer testified concerning the requirements of B&P to maintain the roadbed, drainage and vegetation. To do so, he described maintenance equipment for the tracks which requires a clearance of 25 feet from the centerline of the tracks; in addition, he testified that B&P needs a right-of-way to repair and replace culverts and ditches outside of the 25 feet. (N.T. 174-182)

B&P also relies on Mr. Gilbert, a railroad safety consultant, and that of Michael Stover, PGC witness concerning the hazards posed by a recreational trail built adjacent to an active railroad line.

B&P contends that since the Penn Central has abandoned its right-of-way, the 1882 conveyance (the Bond of Indemnity) granted to B&P's predecessor a right-of-way of sufficient width to permit B&P to maintain and safely operate the railroad. It asserts that this grant includes the land where the Trail is located. In the alternative, B&P argues that by the second 1917 quitclaim deed B&P is entitled to land in excess of the metes and bounds that is necessary to maintain and operate an active railroad, including all land necessary to maintain slopes and culverts.

PGC and Elk contend that the right-of-way granted by the 1882 Bond of Indemnity was intended to grant an easement to allow entry on the land to lay out and construct a railroad. The metes and bounds of the right-of-way were established in the 1917 quitclaim deed conveyed to B&P's predecessor. Elk argues that the 1882 Bond was by its terms a preliminary step to establishing the location of the B&P right-of-way. There is no dispute that the 1917 track maps

of both B&P's predecessor and the Penn Central show that the boundaries of the two railroads do not overlap. Elk further maintains that the Board lacks jurisdiction to consider the safety issued raised by B&P. If B&P's easement is limited by the metes and bounds of the 1917 deed, the resolution of safety issues regarding the operations of the railroad vis-à-vis the operations of a recreational trail is not a matter within the Board's jurisdiction.

In interpreting deeds and other grants of interest in land, the Board looks to the language of the instruments to determine the intent of the parties. The language of the deed should be considered in its entirety, giving effect to all of its terms and provisions, and construing the language in light of the conditions existing at the time of its execution. *United States Steel Corp. v. Hoge*, 503 Pa. 140, 148-49, 468 A.2d 1380, 1384 (1983).

1882 Bond of Indemnity

B&P relies on *Zettlemoyer v. Transcontinental Pipeline Corp.*, 540 Pa. 337, 657 A.2d 920 (1995) and *Rodgers v. Pittsburgh, Fort Worth & Chicago Railway Co.*, 255 Pa. 462, 100 A.2d 271 (1917) for the proposition that a grant of a right-of-way which is indefinite as to width grants to the railroad or public utility the right to appropriate land as necessary for both present and future railroad or utility purposes.

In *Rodgers*, the 1850 deed conveyed "the full and perfect right of way" of an unspecified width for railroad purposes. During the same time period, the railroad acquired by eminent domain a right-of-way of 80 feet against contiguous landowners. From 1850 to 1883, the railroad used only 32 feet of the grant under the 1850 deed. The Court held that the railroad acquired the same 80-foot right-of-way as the railroad acquired by eminent domain against contiguous landowners notwithstanding the fact that the railroad for 33 years had used only 32 feet.

In *Zettlemoyer*, property owners filed a petition for the appointment of a board of view when the defendant (Transco) laid a new pipeline 30 feet outside of a 100-foot right-of-way that had existed for more than thirty years. As in this case, the original grant provided for construction, maintaining, operating and repairing (in that case a pipeline). *Zettlemoyer* involved an agreement which granted Transco the right "to lay...one or more additional lines of pipe approximately parallel to the first pipeline." *Id.* at 341, 657 A.2d at 922. *Zettlemoyer* stands for the proposition where an express right-of-way is granted in general terms it must be construed as to include "any reasonable use", citing *Lease v. Doll*, 485 Pa. 615, 624, 403 A.2d 558, 563 (1979). No such grant appears in the 1882 right-of-way granted in this case.

B&P contends that the grant of 1882 is not limited by the 1917 quitclaim deed. It contends simply that its right-of-way is what the railroad reasonably needs to maintain its operations. There is authority for this proposition in many deeds. However, a significant difference between this case and those cited by B&P is that in none of the cited cases was the open-ended right-of-way followed by a deed of the same premises which described the premises by specific metes and bounds. Nonetheless, cases relied upon by all the parties begin with the proposition that where no definite amount is described, the question for the tribunal is what the grantor intended to convey by the open ended right-of-way.

A "bond of indemnity" has been recognized as one method by which a railroad gained entry onto property to determine the most advantageous route to lay tracks. *See Brown v. City of Scranton*, 231 Pa. 593, 80 A. 1113 (1911). The grantor received as consideration the right to timber cleared by the railroad. The subsequent quitclaim deed is further evidence that the 1882 Bond of Indemnity was a preliminary grant to the railroad entry onto the land to determine the best placement of tracks.

As the parties have noted the 1.8-mile strip of land at issue in this case was built as a ledge into the side of a steep hill along the Clarion River. Such topography seems to augur in favor of the railroad seeking a preliminary grant to explore the available land in order to determine the best location for a roadbed.

The Board agrees with PGC and Elk's contention that the 1884 grant to Ridgeway is strong evidence that the actual construction of the Ridgeway grade was built before the B&P tracks were laid. This then explains the purpose of the quitclaim deed in 1917 made in conjunction with ICC filings—namely to identify the B&P right-of-way in relation to the Penn Central (Ridgeway) right-of-way. Further, it is evidence of both railroad's determination that each could operate a railroad line within the same corridor. More importantly, the Board believes the 1917 deed and maps serve to make certain and definite the rights of both railroads in the event of transfer or abandonment by one or the other.

Finally, the quitclaim deed from Portland Oil & Gas Co. (Exhibit E), the successor to Hyde et al. of the underlying fee, made certain that which was uncertain—namely the metes and bounds. B&P provides no satisfactory reason not to read these two grants together.

For these reasons, the Board believes that the Bond of Indemnity conveyed only a right to enter on the land. Thus, the 1917 deed controls the quantum of the interest of B&P in this matter.

1917 Quitclaim Deed

In the alternative, B&P contends that a proper construction of the 1917 deed grants B&P excess land needed for slopes, cuts and culverts. This argument is an iteration of its argument concerning the 1882 instrument, namely that a railroad right-of-way grants to the railroad the right to use all land reasonably necessary for the operation of its services.

B&P's argument that its right-of-way includes the Trail's right-of-way is based on the common boundary that the two railroads shared first and recognized in the 1884 conveyance by the common grantors, Joseph Hyde et al., to Penn Central's predecessor in interest. From at least 1917 to the 1970s B&P and the Penn Central maintained slopes, cuts and culverts on either side of their rights-of-way. Because some of the slopes, cuts and culverts are located on the Trail's side of the combined right-of-way, B&P argues that its easement extends over the right-of-way of the Trail.

B&P relies on *Palmer v. Philadelphia Suburban Transportation Co.*, 174 Pa. Super. 1, 98 A.2d 245 (1953), where the Court found no trespass when the defendant cut down nine trees on an embankment adjoining its right-of-way, and *Ozehoski v. Scranton Spring Book Water Service Co.*, 157 Pa. Super. 437, 43 A.2d 601 (1945), holding that the water company could increase the width of its water pipe to meet the water needs of the city, for the proposition that its easement must be extended to grant B&P additional land outside of the limits of the 1917 deed for railroad maintenance. In *Palmer*, the deed granted the railway a 40-foot strip of land for its railway line and the right to use and occupy additional land as necessary to construct and maintain slopes. In *Ozehoski*, the court invoked the principle that the owner of an easement may do any act necessary for the continued use of the easement so long as the act does not needlessly increase the burden on the owner of the fee.

The Board believes that neither case supports the conclusion that PGC could not grant a license for a recreation trail on an adjacent right-of -way. Moreover, these cases do not establish B&P's right to exclude others from using the Penn Central-right-of way. Finally, neither PGC nor Elk argue that B&P does not have an easement of necessity over land outside of its right-of-way to operate its railroad and maintain the stability of its tracks, which means maintaining

culverts ditches and growth outside of the limits of the 1917 deed. However, B&P has failed to show that it needs exclusive possession of the former Penn Central right-of-way in order to do so.

Reversionary Interest

B&P argues that when Penn Central abandoned its right-of-way, the land reverted to it, not PGC. BP's argument is as follows. The 1982 Bond of Indemnity granted B&P's predecessor all lands necessary to construct and maintain a railroad. The Penn Central right-of-way was necessary to construct and maintain not only tracks for the Ridgeway and Clearfield Railroad, Penn Central's predecessor, but also B&P. Therefore, the abandonment of Penn Central resulted in a reversion to B&P of its original right-of-way under the 1882 Bond.

At common law, when a railroad abandons a right-of-way the land reverts to the original grantor or the grantor's successor. *Brookbank v. Benedum-Trees Oil Co.*, 389 Pa. 151, 131 A.2d 103, 112 (1957). It is undisputed that PGC is the grantor's successor in this case. The 1882 right-of-way gave the railroad an unspecified amount of land over the property. Two years later, the original grantor gave a second right-of-way, which set the eastern boundary of the two rights-of-way, by metes and bounds that show no overlap. Thus, the 1884 right-of-way to Penn Central's predecessor established at least one line of the B&P's predecessor. This common boundary, as well as the other boundaries of the B&P right-of-way were identified in the 1917 deed and valuation maps.[3]

In its argument regarding the effect of Penn Central's abandonment on its right-of way, B&P relies on *Buffalo Township v. Jones*, 571 Pa. 637, 813 A.2d 659 (2002). However, in that

[3] B&P cites *Buffalo Township v. Jones*, 571 Pa. 637, 813 A.2d 659 (2002), and a line of cases dealing with the issue of abandonment. However, none of those cases stand for the proposition asserted by B&P here that the land reverts "back" to a grantee of an adjacent right-of-way, and not to the grantor or the grantor's successor.

case the Court reaffirmed the rule that the when an abandonment occurs the property reverts to the original grantor. B&P was not a grantor as to any land interest in this case. For these reasons, the Board finds no merit to the argument that the abandoned right-of-way "reverted" to B&P such land as B&P deems necessary for its railroad operation.

The right of B&P to land to maintain its roadbed does not lead to the conclusion that B&P is entitled to determine the use of the Penn Central right-of-way. In *Ozehoski* the Court noted that the grant of an easement is to be construed in favor of the grantee and includes whatever is reasonably necessary for its enjoyment including the right to enter the grantor's land to do any act necessary for the proper use of the easement. In this case, B&P has established that it is necessary to maintain vegetation growth, culverts and ditches outside of its right-of-way. However, it has not demonstrated that it is necessary to maintain any part of the Penn Central right-of-way or to change the Trail in any way to meet its maintenance and operational needs.

Safety Issues--Jurisdiction

B&P also claims that the Trail—or more pointedly the use of the Trail by the public for recreation—is unsafe. It contends that the right-of-way includes the right to the safe operation of the railroad. B&P officials testified as to concern for ballast thrown from the B&P roadbed or maintenance equipment injuring a member of the public. B&P also argues that the testimony of PGC's engineer, Michael Stover, supports its contention that the proximity of B&P's railroad operations to the Trail was unsafe. Mr. Stover testified that he had provided an opinion to PGC that recommended a fence be constructed to prevent flying objects from the train impacting anyone on the trail and to discourage trail users from trespassing on B&P property. (N.T. 206-211) The question of construction of a fence on the common boundary poses a salubrious

resolution[4] that has apparently eluded the parties. It does not, however, pose an issue within the jurisdiction of the Board.

Section 1207 of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 337, provides that the Board has jurisdiction to hear and determine cases involving the title to land or interest therein brought by persons who claim an interest in the title to lands occupied or claimed by the Commonwealth. Having determined that B&P has no title to the former Penn Central right-of-way, the question of the safety of the public vis-à-vis the *operation* of the railroad is not a matter within the jurisdiction of the Board. *Stair v. Commonwealth, Pennsylvania Game Commission*, 368 A.2d 1347 (Pa. Cmwlth. 1977), relied on by B&P, is consistent with this conclusion. *Stair* ruled that the exclusive Board's jurisdiction over property interests claimed by the Commonwealth is not affected by the inability of the Board in that case to award monetary damages.

Accordingly, the Board shall enter the following order.

[4] *See* Frost, Robert, "Mending Wall," North of Boston, 1915.

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BEFORE THE BOARD OF PROPERTY

BUFFALO & PITTSBURGH RAILROAD, INC. Plaintiff	:	Docket No. BP-2003-0003
vs.	:	
COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA GAME COMMISSION Defendant	:	
and	:	
COUNTY OF ELK, Intervenor	:	

ORDER

AND NOW, this nineteenth day of August 2005, in consideration of the record, the briefs of the parties, and the foregoing findings of fact, conclusions of law and discussion, the Board of Property **ORDERS** that the Complaint of Plaintiff Buffalo and Pittsburgh Railroad, Inc., entitled "Interest in Title to Land" be, and the same hereby is, **DISMISSED**.

Andrew Sislo, Chief of Staff
Department of State
Designee of Pedro A. Cortés
Secretary of the Commonwealth
Chairman, Board of Property

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Date of Mailing: August 19, 2005