BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

In Re: Sandersville Railroad Company's Petition For Approval to Acquire Real Estate by Condemnation	**Docket No.: 45045**

PRE-FILED RESPONSIVE EXPERT TESTIMONY OF DR. CONNER BAILEY

on behalf of the No Railroad in Our Community Coalition

August 25, 2023

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Q. PLEASE STATE YOUR NAME, OCCUPATION, AND ADDRESS.

A. My name is Conner Bailey. I am Professor Emeritus of Rural Sociology at Auburn University. I live at 323 Brookside Drive, Auburn, Alabama 36830-5922, and have done so for over 20 years.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am testifying on my own behalf as a person with a professional background that the Commission may consider relevant. I do not represent Auburn University in the current matter before the Georgia Public Service Commission.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?

A. No, I have not previously testified before the Commission.

Q. WHAT IN YOUR ACADEMIC TRAINING AND EXPERIENCE IS RELEVANT TO THE CURRENT MATTER BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION?

A. I have an earned Ph.D. in Development Sociology from Cornell University (1980). I held research positions at two marine science organizations between 1980 and 1985 (International Center for Living Aquatic Resources Management in the Philippines and Indonesia; Woods Hole Oceanographic Institution in Massachusetts). I became a member of the Auburn University faculty in 1985 and have been involved in research in Alabama and the South as a rural sociologist working on questions of rural and community development since that time. My department (Agricultural

Economics & Rural Sociology) is in the College of Agriculture. I was also an Adjunct Professor in the School of Forestry & Wildlife Sciences reflecting what is now over 30 years of research focused on the forest products industry of the South. I have served as a consultant to the Federal Reserve Bank of Atlanta, the Southern Rural Development Center, and the State of Alabama. Internationally, I have served as a consultant for (among others) the World Bank, the Food and Agriculture Organization of the United Stations, and the U.S. Agency for International Development. I have received several awards for teaching and research from Auburn University and from regional and national professional associations. The most significant of these include "Excellence in Research" in 2007 from the Rural Sociological Society (RSS, my primary national professional organization), and the Creative Research & Scholarship Award from Auburn University (2013), given to two faculty members each year, one representing mathematics, engineering and the biophysical sciences, and the other all other fields of scholarship; my award was for the latter category. More recently (August 2023), I was lead author of an article that won Best Paper Award from the Rural Sociological Society for research published in peer-reviewed academic journals. I retired in November 2015 but continue to be active in research and related activities.

Q. HOW WOULD YOU CHARACTERIZE HANCOCK COUNTY, GEORGIA IN THE CONTEXT OF OTHER RURAL COMMUNITIES IN THE SOUTH THAT YOU ARE FAMILIAR WITH?

A. Hancock County shares a similar historical and demographic profile with

many other rural counties in the South, including Sumter County in Alabama, where I have family roots. Like Sumter County, Hancock County has a small (8,735) and slowly declining population that is predominantly Black (69.4 percent).[1] The city of Sparta has a population of 1,306 and is overwhelmingly Black (88 percent).[2] Levels of educational attainment are far below those of Georgia as a whole; 31 percent of the county's population has less than a high school education and only nine percent have a bachelor's degree or above. In comparison, 33 percent of all Georgia residents have a bachelor's degree or above and only 12 percent have less than a high school education.[3] The county's poverty rate of 29 percent is unevenly distributed, with only 1 percent of all white residents with incomes below the poverty rate compared to 39 percent of all Blacks.[4] By gender, 20 percent of all men and 35 percent of all women lived below the poverty level.[5] More than half of those employed worked outside of Hancock County,[6] but 26 percent of all households had no vehicle.[7]

Timber production is the predominant land use in Hancock County, as is true in much of Georgia and the South as a whole. There is one pallet manufacturer in Hancock County. Technological changes associated with timber harvest and wood

[1] U.S. Census Bureau. Decennial Census 2020. P1.
https://data.census.gov/table?g=050XX00US13141&tid=DECENNIALPL2020.P1
[2] Sparta: 2023 GMA Member City Data Profile, Georgia Municipal Association,
https://www.gacities.com/GeorgiaCitiesSite/media/PDF/citydata/72584.pdf.
[3] *Id*.
[4] U.S. Census Bureau. American Community Survey, 2021 ACS 5-Year Estimates. S1701.
https://data.census.gov/table?g=050XX00US13141&tid=ACSST5Y2021.S1701.
[5] *Id*.
[6] U.S. Census Bureau. American Community Survey, 2021 ACS 5-Year Estimates. S0801.
https://data.census.gov/table?g=050XX00US13141&tid=ACSST5Y2021.S0801.
[7] *Supra* note 2.

processing have reduced employment in this sector.[8] The closest sawmill is approximately 30 miles away in Milledgeville; the closest pulp and paper mill is in Dublin, approximately 60 miles from Sparta. Based on my experience conducting research on pulp and paper mills, the normal "woodshed" (procurement zone) is within 50 miles of a mill due to the cost of transport.[9]

Q. WHAT COMPANIES STAND TO BENEFIT FROM CONSTRUCTION AND OPERATION OF THE PROPOSED RAILROAD LINE CONNECTING THE HANSON QUARRY AND THE CSX TRANSPORT LINE?

A. Heidelburg Materials (HM) is a multi-national corporation with headquarters in Germany. Stocks in HM are traded on the Frankfurt Stock Exchange and are part of the DAX Stock Index of 40 "blue-chip" stocks. The HM quarry in Sparta is sometimes called the Hanson quarry in reference to a previous owner, and the proposed rail spur is sometimes referred to as the Hanson spur. I will refer to these as the HM quarry and the Sandersville Railroad (SRS) rail spur.

Based on the testimony of Mr. Scott Dickson, construction of the SRS rail spur HMs Sparta Quarry has the capacity to more than double shipments. Reliance on trucks to transport aggregate and related materials is a constraint. The proposed railroad spur would provide connection to the CSX Transportation's (CSXT) rail network. HM's competitors in the Sparta area (e.g., Vulcan Materials) have access to that line, putting HM as a commercial disadvantage. Pittman Construction, which

[8] Bailey, Conner, Abhimanyu Gopaul, Ryan Thomson, and Andrew Gunnoe, Taking Goldschmidt to the Woods: Timberland Ownership and Quality of Life in Alabama, *Rural Sociology* 86(1):50-80 (2021).
[9] Bailey, Conner, Janice Dyer*, and Larry Teeter, Assessing the Rural Development Potential of Lignocellulosic Biofuels in the Rural South, *Biomass and Bioenergy* 35(4):1408-1417 (2011).

is co-located at the Hanson Quarry, shares this same disadvantage.

The Sandersville Railroad Company (SRC) is based in the town of Sandersville, Washington County, Georgia, approximately 30 miles from Sparta. SRC operates a short line rail system in Washington County that links various enterprises in and around the city of Sandersville to the Norfolk Southern rail system. SRC would benefit economically by establishing service in a new area.

SRC is the sole owner of Southern Chips LLC that operates a chip mill in Sandersville. A chip mill is an operation where logs are delivered and turned into chips for rail transport to pulp and paper mills, essentially expanding the woodshed of such mills beyond the roughly 50-mile radius beyond which transport costs for raw logs by truck are an economic constraint. Southern Chips currently uses the Norfolk Southern rail system. In his direct testimony, Mr. Jeff Custer says Southern Chips proposes to ship chips by truck from Sandersville to Sparta and load chips onto rail cars for shipment across the CSXT rail network. Why they do not currently truck their products to Sparta in order to utilize CSXT's system is unclear. The proposed rail spur is 4.5 miles in length and its construction would only shave a few miles off the distance they would need travel to the CSXT siding in Sparta.

Veal Farms Transload, LLC and Revive Milling, LLC both are located in Tennille, also about 30 miles from Sparta. They are linked to the Norfolk Southern rail system. In his direct testimony, Mr. Cale Veal says these two enterprises will benefit from access to the proposed rail spur in Hancock County. Presumably they would truck their products to connect to the new rail spur, though this was not

explicitly stated. I have the same logistics questions for these two enterprises as noted above for Southern Chips: if connection to the CSXT rail system is as valuable as Mr. Veal says it would be, why do they not currently send their products by truck to Sparta and connect with that system?

The CSXT rail line runs as a single track through the town of Sparta. Less than a mile to the east of town the rail line becomes a double track for approximately 1800 feet immediately adjacent to the quarry operated by Vulcan Materials. There is a separate rail spur that directly serves the Vulcan Materials quarry. I am unaware of any consideration given to using the area currently double tracked as a transshipment point for wood chips and agricultural products. Doing so would eliminate the need to build 4.5 mils of rail line and, in the process, divide multiple parcels in the process.

Q. WHAT DO YOU KNOW ABOUT THE OWNERS OF PARCELS THAT WOULD BE AFFECTED IF THE SRS RAIL SPUR WAS CONSTRUCTED?

A. There are 18 parcels affected by the proposed SRS rail spur. Three of these are owned by SRS, one is owned by CSXT, and one is owned by Verizon Wireless. Three parcels are owned by McEver Family LLLP, which also owns the land both where the HP quarry is located and where proposed quarry expansion may take place. The economic interests of the McEver Family LLLP may align with those of HP and SRS.

Four of the remaining eight parcels are owned by members of the Smith family. Mr. James Blaine Smith originally purchased 600 acres of land in 1926 and his

descendants currently own four parcels totaling approximately 285 acres that would be affected by the proposed SRC rail spur. The amount of land that SRC proposes to take from the Smith family by eminent domain is just under 17 acres, but the land affected cuts their parcels in half, adversely affecting their ability to enjoy and effectively utilize their land. The same is true of the other four parcels which total 515 acres, with 26 acres targeted by SRC for a taking by eminent domain.

In news accounts, special attention has been paid to members of the Smith family and questions of justice associated with the proposal to take their land through eminent domain. This is the case partly because Janet Smith, wife of a third-generation descendent of Blaine Smith, has been particularly vocal in opposition to the proposed SRC spur.[10] Janet Smith is a U.S. Army veteran and retired schoolteacher. But there is a wider context to understand this issue of taking property from Black families.

What members of the Smith family characterize as a threat to their property is best understood in the context of significant land loss by Black farmers and other Black property owners over the past 10 years. In 1920, Black farmers owned 16 million acres of agricultural land; today that figure is less than five million acres.[11]

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[10] Nina Lakhani, Majority Black town fights to stop land being seized for gravel quarry rail link, The Guardian (Apr. 3, 2023), https://www.theguardian.com/us-news/2023/apr/03/sparta-majority-black-georgia-town-railroad-land-seizures; Nicole Duncan-Smith, They didn't expect us to push back; Small Georgia town sets out to fight railroad company's attempt to steal their land using eminent domain, Atlanta Black Star, (Apr. 14, 2023), https://atlantablackstar.com/2023/04/14/rural-georgia-city-sets-out-to-win-david-versus-goliath-fight-against-railroads-land-grab-attempt/.

[11] Yang, John, 'Gaining Ground' Highlights Black Farmers' Efforts to Reclaim Lost Land, PBS News Weekend, July 23, 2023, https://www.pbs.org/newshour/show/gaining-ground-highlights-black-farmers-efforts-to-reclaim-lost-land#:~:text=In%201910%2C%20about%2014%20percent,less%20than%205%20million%20acres.

Some of these lands were sold voluntarily, but much of this decline was caused by predatory legal practices associated with heirs property (especially partition of property actions as well as tax sales), the inability of Black farmers to access credit from the U.S. Department of Agriculture (USDA) or commercial lenders, and other discriminatory practices.[12] To resolve a class action lawsuit, the U.S. government acknowledged patterns of racial discrimination against Black farmers by the USDA in two separate cases known as *Pigford I* and *Pigford II*.[13]

Predatory partition actions and tax sales have been used throughout the South to take Black owned lands through legal actions that have raised serious ethical concerns. Thomas Mitchell, a law professor at Boston College and 2022 MacArthur Award recipient has been among the leading legal scholars involved in examining the impact of heirs property on land loss among Black property owners. Heirs property is a culturally and historically specific form of tenancy-in-common brought about by the absence of access to trustworthy legal services throughout the duration of the Jim Crow era when Black property owners did not write wills. With each succeeding generation, the number of heirs grew, creating numerous obstacles for owners.[14] In

[12] Ryan Thomson and Conner Bailey, Identifying Heirs' Property: Extent and Value Across the South, *Journal of Rural Social Sciences,* 2023, https://srdc.msstate.edu/sites/default/files/2023-06/thomson_bailey_pre-print-manuscript-5.19.23.pdf; Bailey, Conner, Rebecca Barlow, and Janice Dyer, Practical Constraints to Timber Management among African American Owners of Heir Property, *Landscape and Urban Planning* 188:180-187, 2019; Bailey, Conner, Robert Zabawa, Janice Dyer, Becky Barlow, and Ntam Baharanyi, Heirs' Property and Persistent Poverty among African Americans in the Southeastern United States, 2019; Cassandra Johnson Gaither, Ann Carpenter, Tracy Lloyd McCurty, and Sara Toering (eds.), Heirs' Property and Land Fractionation: Fostering Stable Ownership to Prevent Land Loss and Abandonment, e-Gen. Tech. Report SRS-244, 2019.

[13] Cowan, Tadlock and Jody Feder, The *Pigford* Cases: USDA Settlement of Discrimination Suits by Black Farmers. Washington, D.C.: Congressional Research Service, 2013, https://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS20430.pdf.

[14] Bailey, Conner, Rebecca Barlow, and Janice Dyer, Practical Constraints to Timber Management among African American Owners of Heir Property, *Landscape and Urban Planning* 188:180-187, 2019.

coastal Georgia, as well as in both North and South Carolina and Florida, lands that once were once were owned by the Gullah/Geechee population of the Sea Islands and Lowcountry were stolen through legal but unscrupulous means by developers and real estate speculators, resulting in development of luxury homes and coastal resorts.[15]

In recent years, the 2018 Farm Bill made provision for assisting farmers who operate land owned as heirs property to gain access to USDA farm credit, and the Federal Emergency Management Agency has modified its policies so that the Agency can provide assistance to people who do not have clear title – a key characteristic of heirs property - to an affected property.

I have no knowledge that any of the property owners involved in this case own their land as heirs property. I simply note that growing attention to this phenomenon is one reason perceived threats to Black land ownership have emerged as an important social and policy concern.

Of more direct relevance is increased attention to the use of eminent domain as a form of civil rights abuse. The U.S. Commission on Civil Rights in 2007 published a report on this exact topic.[16] A highly publicized case of Black property wrongfully being taken by eminent domain occurred in California in the 1920s and

[15] Bailey, Conner and Ryan Thomson, Heirs Property, Critical Race Theory, and Reparations, *Rural Sociology* 87(4):1219-1243, 2022.
[16] U.S. Commission on Civil Rights, The Civil Rights Implications of Eminent Domain Abuse, 2007, https://www.usccr.gov/files/pubs/docs/FINAL_FY14_Eminent-Domain-Report.pdf.

was only rectified in the current year.[17] Two months ago, abuse of eminent domain affecting Black property owners was highlighted in a detailed New York Times article.[18]

Other forms of racial discrimination affecting Black property owners included the practice of "redlining" by both the federal government and commercial banks, stretching back to the 1930s, which had the effect of making it impossible for owners of property in neighborhoods with significant Black populations to get loans for property development and improvement.[19]

Media attention to the Hancock County case reflects the realization that Black property owners have faced multiple forms of discrimination. That does not mean the current case represents conscious discrimination. Given the long and multi-faceted history of discrimination against Black property owners, however, any time a government or powerful corporate actors seeks to take Black property through eminent domain or other means, extra caution and consideration is appropriate.

Q. IS THE PROPOSED TAKING OF PROPERTY THROUGH EMINENT DOMAIN JUSTIFIED BY FURTHERANCE OF THE PUBLIC GOOD OR IS IT PRIMARILY A QUESTION OF PRIVATE GAIN?

A. In my opinion, the proposed SRC rail spur would be of economic benefit to

[17] Lindwall, Courtney, A Once-Thriving Black-Owned Beach is Returned to its Rightful Owners, National Resouces Defense Council, Feb. 10, 2023 https://www.nrdc.org/stories/once-thriving-black-owned-beach-returned-its-rightful-owners.
[18] Burch, Audra, A New Front in Reparations: Seeking the Return of Lost Family Land, New York Times, June 4, 2023, https://www.usccr.gov/files/pubs/docs/FINAL_FY14_Eminent-Domain-Report.pdf.
[19] Federal Reserve Bank of St. Luis, Redlining, 2023, https://www.federalreservehistory.org/essays/redlining#:~:text=The%20FHA%20began%20redlining%20at,20%2Dyear%20loans%20they%20were.

SCR itself. HM and Pittman Construction also would benefit by having increased access to markets. Whether Southern Chip or other companies based in and around Sandersville would experience economic gain is not to me clear for reasons suggested above. I consider it likely that the letters of support from Cale Vane on behalf of Veal Farms Transload, LLC and Revive Milling, LLC, and from Jeff Custer of Southern Chip, have less to do with economic benefit of the SRC rail spur to their companies and more to do with collegial support for an important business partner in their hometown of Sandersville.

I am not an attorney, but my understanding of Georgia law is that eminent domain is a power that can be used only in furtherance of the public good. Economic gain by SRC, HM, and Pittman Construction does not constitute public good.

From the direct testimony available to me, I can identify two factors that may reasonably be considered contributors to the public good. The first is expanded employment. We are told that there will be eight to ten new jobs with compensation averaging $90,000. These figures are presented as a simple statement without any supporting evidence or detail. How does this compensation rate compare with compensation paid to current employees? When would these new jobs become available? Is this expansion of the workforce dependent upon HM gaining permits to expand into additional land within their property? Would local residents be given preference in hiring?

How many employees currently work for HM in Hancock County? The most recent available data show that mining and quarrying accounted for just 36 full-time

year-round jobs in Hancock County.[20] This figure includes both HM employees and employees of the Vulcan quarry just outside Sparta. Every job is valuable in Hancock County, but in my opinion, this small number of jobs is insufficient as a public good to justify property takings through eminent domain.

A second possible public good would be in the form of increased tax revenues to municipal and county governments. In his direct testimony (page 6), Allen Haywood, Mayor of Sparta and Executive Director of the Sparta and Hancock County Development Authority, stated that "quarries are especially important to our County and city governments because the rocks generate sales taxes. Four cents ($0.04) is added to every dollar ($1.00) of granite mined and sold to the direct benefit [of] our County and its citizens." Presumably the SRC rail spur would increase production from the HM quarry, with additional revenue the result.

In an interview with WGXA News on August 2, 2023, Mr. Haywood repeated his claim that Hancock County "helps us with sales tax."[21] However, an attorney interviewed by the WGXA News reported contradicted this claim pointing out that raw materials like rock are tax-exempt, and that this is doubly true of materials purchased by state and federal government entities responsible for most highway construction. A person identified as a professional with long experience in the aggregate industry also was interviewed by the WGXA reporter and said the only

[20] U.S. Census Bureau. American Community Survey, 2021 ACS 5-Year Estimates. S2404. https://data.census.gov/table?g=050XX00US13141&tid=ACSST5Y2021.S2404 No mining or quarrying employment was reported in the ACS 5-year estimates between 2010 and 2016, suggesting that this industry is of recent origins.

[21] Gloria Finney, Sparta mayor supports controversial railroad plans amid residents' concerns of eminent domain, WGXA News, Aug. 3, 2023, https://wgxa.tv/news/local/sparta-mayor-supports-controversial-railroad-plans-amid-residents-concerns-of-eminent-domain.

sales tax that might accrue to Hancock County was for rock used by local contractors, because any sales tax is paid at the point of delivery, not at the point of production (i.e., the quarry).

This appears to be the case based on Georgia Code § 48-8-3.2, which exempts manufacturers from paying state and local sales taxes on goods and services necessary to the manufacturing process—consumable supplies, energy, equipment, industrial materials, and machinery. The same code section includes companies engaged in mining, quarrying, oil and gas extraction, electric power generation, and newspaper publishing.[22] Thus, the tax benefits associated with the SRC rail spur are uncertain and will require expertise in tax law which I do not possess. I cannot say at this time that tax revenues associated with the SRC rail spur and associated quarry activity provide sufficient public good justification to warrant the use of eminent domain.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

[22] Georgia Department of Audits & Accounts, Tax Incentive Evaluation: Manufacturing Sales Tax Exemption, January 3, 2023, https://www.audits2.ga.gov/reports/summaries/manufacturing-sales-tax-exemption/.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Direct Testimony via electronic mail and United States Mail with sufficient postage thereon to the following, pursuant to Ga. Comp. R. & Regs. 515-16-16-.02 and 515-2-1-.04(4)(b), (3), addressed as follows:

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Respectfully submitted this 25th day of August, 2023.

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