

SERVICE DATE – JULY 22, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 406 (Sub-No. 5X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY—ABANDONMENT
EXEMPTION—IN CLARK AND COMANCHE COUNTIES, KAN.

Decided: July 21, 2020

On February 20, 1996, Central Kansas Railway, Limited Liability Company (CKR), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 30.3-mile rail line known as the Englewood Subdivision, extending between milepost 136, at or near Protection, and milepost 166 plus 1,846 feet, at or near Englewood, in Clark and Comanche Counties, Kan. (the Line). Notice of the exemption was served and published in the Federal Register on March 11, 1996 (61 Fed. Reg. 9743), and the exemption became effective on April 10, 1996. By decision served April 4, 1996, the exemption was made subject to a condition that, prior to commencing salvage operations, CKR shall consult with the Kansas Department of Health and Environment regarding certification requirements.

On July 2, 1997, Iowa Trails Council (ITC) requested issuance of a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.¹ Also on July 2, 1997, CKR filed a letter consenting to the issuance of a NITU and noting that ITC and CKR had reached an interim trail use/rail banking agreement. By decision served July 11, 1997, a NITU was issued. By letter filed July 13, 1998, OmniTRAX, Inc. (OmniTRAX), at that time the parent of CKR, advised the Board that the Line's right-of-way was conveyed to ITC pursuant to the Trails Act effective October 1, 1997.

On February 10, 2000, a replacement NITU was issued substituting Short Grass Prairie Trail, Inc. (Short Grass), as the trail sponsor. On June 10, 2013, a replacement NITU was issued substituting Sunflower Rail-Trails Conservancy, Inc. (SRTC), as the trail sponsor.

On June 8, 2020, SRTC filed a request pursuant to 49 C.F.R. § 1152.29(d)(2) that the Board vacate the NITU, effective on the date of the Board's decision. Under 49 C.F.R. § 1152.29(d)(2), copies of a decision vacating a NITU must be served on (in addition to the trail sponsor) the owner of the right-of-way and the abandonment exemption applicant. Here, however, it is not clear who currently owns the right-of-way or whether the abandonment exemption applicant, CKR, still exists.

¹ An earlier NITU was issued on May 8, 1996, permitting another party to negotiate with CKR for interim trail use/rail banking. However, following two extensions, that NITU expired on July 2, 1997.

In June 2001, Kansas & Oklahoma Railroad, Inc. (K&O), which is controlled by Watco Companies, Inc. (Watco), acquired the majority of the lines owned or leased and operated by CKR, although not the Line involved in this proceeding. See Kan. & Okla. R.R.—Acquis. Exemption—Cent. Kan. Ry., FD 34030 (STB served June 12, 2001); Watco Cos.—Continuance in Control Exemption—Kan. & Okla. R.R., FD 34042 (STB served June 12, 2001); see also Farmco, Inc. v. Cent. Kan. Ry., NOR 42043 (STB served Aug. 28, 2001). However, the April 30, 2013 petition seeking a replacement NITU for SRTC as the new trail sponsor states that CKR itself was “acquired on or about May 31, 2001, by Watco Companies, specifically its Kansas & Oklahoma Railroad, Inc. subsidiary.” It is unclear, therefore, whether CKR still exists.

Moreover, although OmniTRAX’s 1998 letter to the Board states that the Line’s right-of-way “was conveyed” to ITC, the nature of the interest conveyed was not specifically explained. The April 30, 2013 petition seeking a replacement NITU for SRTC includes a quitclaim deed from ITC to Short Grass, but the record does not indicate the nature of the interest that the current trail sponsor, SRTC, may hold in the right-of-way. It is therefore unclear who is the “owner” of the right-of-way within the meaning of 49 C.F.R. § 1152.29(d)(2)(ii).

Accordingly, a copy of this decision will be served on OmniTRAX, K&O, and Watco. Those entities, as well as SRTC, the current trail sponsor, will be requested to provide the Board with additional information concerning who currently owns the right-of-way and whether CKR still exists by August 11, 2020.

It is ordered:

1. This proceeding is reopened.
2. OmniTRAX, K&O, Watco, and SRTC are requested to provide the Board with additional information, as discussed above, by August 11, 2020.
3. This decision will be served on OmniTRAX, K&O, and Watco.
4. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.