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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB 3 (Sub-No. 111X)

MISSOURI PACIFIC RAILROAD—ABANDONMENT EXEMPTION—
IN OSAGE, LYON AND MORRIS COUNTIES, KAN.

Docket No. AB 3 (Sub-No. 115)

MISSOURI PACIFIC RAILROAD COMPANY—ABANDONMENT—
IN MIAMI, FRANKLIN, AND OSAGE COUNTIES, KAN.

Docket No. AB 3 (Sub-No. 121X)

MISSOURI PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN MORRIS AND DICKINSON COUNTIES, KAN.

**PETITION TO PARTIALLY VACATE NOTICE
OF INTERIM TRAIL USE OR ABANDONMENT**

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**PETITION TO PARTIALLY VACATE NOTICE
OF INTERIM TRAIL USE OR ABANDONMENT**

Union Pacific Railroad Company, for itself and as successor-in-interest to Missouri Pacific Railroad Company, hereby petitions the Surface Transportation Board to vacate, in part, the notice of interim trail use or abandonment issued in the captioned proceedings (“NITU”) to permit Union Pacific to use a 0.10-mile segment of the rail line rail banked in those proceedings for railroad purposes. Union Pacific seeks to vacate the NITU only with respect to the 0.10-mile line segment between milepost 451.47 and milepost 451.57. The Kansas Department of Wildlife and Parks (“KDWP”), the interim trail sponsor, has agreed to reconvey the line segment to Union Pacific.

BACKGROUND

Between 1993 and 1995, Missouri Pacific was authorized to abandon three consecutive portions of its Hoisington Subdivision between milepost 335.5, near Osawatomie, Kansas, and milepost 451.57, near Herington, Kansas. *See Missouri Pac. R.R.—Abandonment Exemption—In Osage, Lyon & Morris Counties, Kan*, Docket No. AB 3 (Sub-No. 111X) (ICC served Dec. 7,

1993); *Missouri Pac. R.R.—Abandonment—In Miami, Franklin, & Osage Counties, Kan.*, Docket No. AB 3 (Sub-No. 115) (ICC served Dec. 30, 1994); *Missouri Pac. R.R.—Abandonment Exemption—In Morris & Dickinson Counties, Kan.*, Docket No. AB 3 (Sub-No. 121X) (STB served Mar. 3, 1995). In 1997, after a series of events, the Board authorized Kansas Horseman Foundation, Inc., later renamed the Kanza Rail-Trails Conservancy, Inc. (“KRTC”), to be the interim trail sponsor of the three rail-banked portions of the Hoisington Subdivision. *See Missouri Pac. R.R.—Abandonment Exemption—In Osage, Lyon & Morris Counties, Kan.*, Docket No. AB 3 (Sub-No. 111X) (STB served July 21, 1997) (consolidating proceedings and issuing a single notice of interim trail use or abandonment).

In 2013, Union Pacific was authorized to abandon its Osawatomie Industrial Lead from milepost 335.0 to milepost 335.5 near Osawatomie, Kansas. *See Union Pac. R.R.—Abandonment Exemption—In Miami County, Kan.*, Docket No. AB-33 (Sub-No. 313X) (STB served July 23, 2013). An interim trail use/rail-banking agreement was subsequently reached for 0.45 miles of the line between milepost 335.05 and milepost 335.5, and KRTC became the interim trail sponsor of the 0.45-mile portion of the rail-banked line. *See Union Pac. R.R.—Abandonment Exemption—In Miami County, Kan.*, Docket No. AB 33 (Sub-No. 313X) (STB served June 29, 2015).

By decision served May 21, 2025, KDWP was substituted as the interim trail sponsor of the rail-banked line between milepost 335.05 near Osawatomie and milepost 451.57 near Herington. A copy of the decision is attached hereto as Exhibit A.

Recently, Union Pacific has determined that its ability to provide railroad service would be enhanced by constructing certain ancillary track near Herington to support operations on its Topeka Subdivision of the Tucumcari Line, which crosses the rail-banked portion of the Hoisington Subdivision near Herington. The project will not involve expansion into new territory or change

existing competitive conditions. The project requires use of a 0.10-mile portion of the rail-banked line discussed above—specifically, the portion at the westernmost end of the line, between milepost 451.47 and milepost 451.57. The balance of the line, between milepost 335.05 and milepost 451.47, would not be affected and should remain rail banked by KDWP.

DISCUSSION

Board precedent establishes that when a rail carrier seeks to abandon a rail line and consents to the issuance of a notice of interim trail use, the carrier and any successor to the carrier's interests retain a residual right to reinstitute rail operations on all or part of the rail-banked line at any time. As the Interstate Commerce Commission explained in *Norfolk & Western Railway Co.—Abandonment Between St. Marys and Minster in Auglaize County, Ohio*:

By consenting to the issuance of a CITU/NITU, a carrier agrees to forgo consummating the authorized or exempted abandonment. As a consequence, its common carrier obligation does not terminate. Instead, the abandoning carrier retains a residual common carrier obligation and transfers the right-of-way to the trail user, subject to the stipulation that the rail corridor remain available for the reinstitution of rail service. A carrier's decision to agree to a CITU/NITU is totally voluntary and, as far as the Commission is concerned, may be withdrawn at any time the abandoning carrier wishes to reinstitute rail operations over the right-of-way.

9 I.C.C.2d 1015, 1018 (1993); *see also Georgia Great Southern—Abandon. & Discontin. of Service—GA*, 6 S.T.B. 902, 906 (2003) (“In short, an interim trail use agreement is subject to being cut off at any time by the reinstitution of rail service. If and when the railroad wishes to restore rail service on all or part of the property, it has the right to do so, and the trail user must step aside.”), *pet. for reconsid. denied* (STB served Feb 2, 2004); *cf.* 16 U.S.C. § 1247(d) (allowing interim trail use “if such interim use is subject to restoration or reconstruction for railroad purposes”). Further, because Missouri Pacific would not have needed Board authority to

construct ancillary track using the right-of-way between milepost 451.47 and milepost 451.57, *see* 49 U.S.C. § 10906, and because Union Pacific is the successor in interest to Missouri Pacific, *see Union Pac.—Control—Missouri Pac.*, 366 I.C.C. 459 (1982), no additional authority is required for Union Pacific to use the segment at issue for rail purposes in this instance. *See, e.g., Georgia Great Southern*, 6 S.T.B. at 906. Accordingly, the Board should partially vacate the NITU issued to KDWP.

CONCLUSION

Union Pacific requests that the Board vacate the NITU issued to KDWP with respect to the 0.10-mile segment between milepost 451.47 and milepost 451.57 near Herington, Kansas.

Respectfully submitted,

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May 27, 2025

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, hereby certify that on this 27th day of May, 2025, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, on:

Christopher J. Kennedy
Secretary
Kansas Department of Wildlife and Parks
102 S. Kansas Ave., Suite 200
Topeka, KS 66612

/s/ Michael L. Rosenthal

52592
DO

SERVICE DATE – MAY 21, 2025

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 3 (Sub-No. 111X)

MISSOURI PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN OSAGE, LYON AND MORRIS COUNTIES, KAN.

Docket No. AB 3 (Sub-No. 115)

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Docket No. AB 3 (Sub-No. 121X)

MISSOURI PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN MORRIS AND DICKINSON COUNTIES, KAN.

Docket No. AB 33 (Sub-No. 313X)¹

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN MIAMI COUNTY, KAN.

Decided: May 21, 2025

This decision addresses a joint petition for substitution of trail user under 49 C.F.R. § 1152.29(f) for four connected rail-banked lines extending between milepost 335.05, near Osawatomie, Kan., and milepost 451.57, near Herington, Kan.

By decision and notice of interim trail use or abandonment (NITU) served on July 25, 1997 (July 1997 Decision & NITU), in Docket Nos. AB 3 (Sub-No. 111X), AB 3 (Sub-No. 115), and AB 3 (Sub-No. 121X), the Board authorized the Kansas Horseman Foundation (now known as Kanza Rail-Trails Conservancy, Inc. (KRTC)) to replace Seranata Farms School of Equestrian Arts as the trail sponsor for the rail-banked lines at issue in those three dockets. As further detailed in the July 1997 Decision & NITU, the lines consist of: (i) a portion of a line of railroad known as the Flint Hills Greenway (formerly known as the Hoisington Subdivision), between milepost 388.25 near Osage City, Kan., and milepost 425.0 near Council Grove, Kan. (Docket

¹ In the July 1997 Decision & NITU (defined below), the Board consolidated Docket Nos. AB 3 (Sub-No. 111X), AB 3 (Sub-No. 115), and AB 3 (Sub-No. 121X). Docket No. AB 33 (Sub-No. 313X) has not been consolidated with these proceedings but is being addressed in the same decision for administrative efficiency.

No. AB 3 (Sub-No. 111X)); (ii) a portion of the Flint Hills Greenway between milepost 335.5 near Osawatomie, and milepost 388.25 near Osage City, as well as a portion of a line of railroad known as the Topeka Industrial Lead, between milepost 368.3 near Lomax, Kan., and milepost 381.8 near Overbrook, Kan. (Docket No. AB 3 (Sub-No. 115)); and (iii) a portion of the Flint Hills Greenway between milepost 425.0 near Council Grove and milepost 451.57 near Herington (Docket No. AB 3 (Sub-No. 121X)). See July 1997 Decision & NITU, AB 3 (Sub-No. 111X) et al., slip op. at 1-2.

Additionally, by decision and NITU served on June 29, 2015, in Docket No. AB 33 (Sub-No. 313X), the Board authorized KRTC to replace the City of Osawatomie as the trail sponsor for the line of rail on the Osawatomie Industrial Lead between milepost 335.05 and milepost 335.5, near Osawatomie.

On April 9, 2025, KRTC and the Kansas Department of Wildlife and Parks (KDWP) (together, Petitioners) filed a joint petition indicating that KRTC and KDWP have entered into an agreement whereby KDWP has agreed to use the portion of rail line located between milepost 335.05 near Osawatomie and milepost 451.57 near Herington (the Line) for public, trail, and recreation uses. (Joint Pet. 2.) The joint petition states that KRTC intends to transfer responsibility for the Line to KDWP within 90 days of the Board's decision authorizing the substitution. (*Id.*) Accordingly, KRTC and KDWP request that the Board, pursuant to 49 C.F.R. § 1152.29(f), reopen the above-captioned proceedings, vacate the existing NITUs served on July 25, 1997, and June 29, 2015, and issue a replacement NITU substituting KDWP as the Line's new interim trail sponsor in place of KRTC.²

As required by 49 C.F.R. § 1152.29(f), Petitioners have submitted a copy of each extant NITU and a statement of willingness by KDWP to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against “the portion of the right-of-way formerly owned by Missouri Pacific Railroad and Union Pacific Railroad Company and currently managed by [KRTC]”—which is located between milepost 335.05 near Osawatomie and milepost 451.57 near Herington. (Joint Pet., Ex. 2.) KDWP also acknowledges that the use of the right-of-way for trail purposes is subject to KDWP's continuing to meet the responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. (*See id.*) Petitioners state that “Union Pacific Railroad Company has consented to the substitution of KDWP as interim trail manager.” (Joint Pet. 2.)

² Petitioners have not requested that KDWP become the interim trail sponsor for the portion of the Topeka Industrial Lead between milepost 368.3 and 381.8, which, as noted above, was part of the trackage at issue in Docket No. AB 3 (Sub-No. 115). See July 1997 Decision & NITU, slip op. at 1.

The petition meets the requirements of 49 C.F.R. § 1152.29(f). Accordingly, the request to substitute trail users in Docket Nos. AB 3 (Sub-No. 111X), AB 3 (Sub-No. 115), AB 3 (Sub-No. 121X), and AB 33 (Sub-No. 313X) will be granted, and replacement NITUs will be issued.³

It is ordered:

1. These proceedings are reopened.
2. The NITU served on July 25, 1997, in Docket Nos. AB 3 (Sub-No. 111X), AB 3 (Sub-No. 115), and AB 3 (Sub-No. 121X) is partially vacated, as described above.
3. A replacement NITU applicable to KDWP as interim trail sponsor in Docket Nos. AB 3 (Sub-No. 111X), AB 3 (Sub-No. 115) (except with respect to the portion of the Topeka Industrial Lead between milepost 368.3 and 381.8), and AB 3 (Sub-No. 121X) is issued, effective on the service date of this decision and notice.
4. The NITU served on June 29, 2015, in Docket No. AB 33 (Sub-No. 313X) is vacated.
5. A replacement NITU applicable to KDWP as interim trail sponsor in Docket No. AB 33 (Sub-No. 313X) is issued, effective on the service date of this decision and notice.
6. Interim trail use/rail banking is subject to the future restoration of rail service and to KDWP's continuing to meet the financial obligations for the right-of-way.
7. If the trail sponsor intends to terminate trail use, it must send the Board a copy of this decision and notice and request that the NITU be vacated on a specified date.
8. This decision and notice is effective on its service date.

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

³ Because Petitioners have not requested substitution with respect to the portion of the Topeka Industrial Lead at issue in Docket No. AB 3 (Sub-No. 115), KRTC remains the interim trail sponsor for that portion of the right-of-way. Accordingly, the portion of the July 1997 Decision & NITU pertaining to that segment remains in effect.