

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1032X

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NEBRASKA, KANSAS & COLORADO RAILWAY, L.L.C.
-- ABANDONMENT EXEMPTION --
IN DECATUR, NORTON, AND PHILLIPS COUNTIES, KANSAS AND HARLAN
COUNTY, NEBRASKA

REPLY TO KANSAS SOCIETY OF LAND SURVEYORS

Karl Morell
Karl Morell & Associates
440 1ST Street, N.W.
Suite 440
Washington, D.C. 20001
(202) 595-9045

Attorney for:
NEBRASKA, KANSAS & COLORADO
RAILWAY, L.L.C.

Dated: March 19, 2018

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On June 12, 2015, Nebraska, Kansas & Colorado Railway, L.L.C. ("NKCR") filed a Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1152.50 to abandon 57.31 miles of rail lines located: (1) between milepost 3.35, near Orleans, Nebraska, and milepost 29.84, at Almena, Kansas; (2) between milepost 47.23, at Reager, Kansas, and milepost 78.05, at Oberlin, Kansas; and (3) the Norton Spur located in Norton, Kansas (the "Lines").

By decision served September 4, 2015, the Surface Transportation Board ("Board") granted the exemption and authorized the abandonment of the Lines. The exemption became effective on September 8, 2015. On February 27, 2018, nearly two and one-half years after the exemption became effective, the Kansas Society of Land Surveyors ("KSLS") filed its Comments with the Board. KSLS alleges that the tracks along the Lines "constitute a survey monument which controls the location of property lines along the railroad corridor." KSLS requests, among other things, that the Board order NKCR to complete a detailed survey before salvage operations commence.

KSLS's requested relief is not only extraordinary but also woefully late. The Lines have been salvaged for some time.¹ Moreover the Lines were necessarily constructed before any adjacent landowners used the tracks as survey markers. KSLS fails to explain why the railroad, and not the adjacent landowners, should be responsible for conducting any surveys.

REPLY

The exemption in this proceeding has been effective for some time. The standard for revoking an exemption is whether regulation is needed to carry out the rail transportation policy of 49 U.S.C. § 10101. 49 U.S.C. § 10502(d). The party seeking revocation of an exemption has the burden of proving that regulation of the transaction is necessary. Requests to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted. STB Docket No. AB-33 (Sub-No. 265), *Union Pacific Railroad Company – Abandonment and Discontinuance of Trackage Rights Exemption -- In Los Angeles County, CA* (not printed), served December 16, 2008; *Minnesota Comm. Ry., Inc. – Trackage Exempt. – BN RR. Co.*, 8 I.C.C.2d 31, 35-36 (1991); Finance Docket No. 31617, *Chesapeake & Albemarle R. Co. – Lease, Acq. & Oper. Exemp. – Southern Ry. Co.* (not printed), served September 19, 1991; Finance Docket No. 31102, *Wisconsin Central Ltd. – Exemp. Acq. & Oper. – Certain Lines of Soo L.R. Co.* (not printed), served July 28, 1988.

KSLS's Comments are governed by 49 C.F.R. § 1152.25(e)(4), which requires KSLS to state in detail the respects in which the decision in this proceeding involves material error, or is affected by new evidence or substantially changed circumstances. The requested relief may only be granted upon a showing that the challenged action would be materially affected by one or

¹ NKCR has not consummated the abandonment because it is still seeking an entity that is willing and able to railbank the Lines.

more of these criteria. 49 C.F.R. § 1152.25(e)(2)(ii). *See* STB Docket No. AB-6 (Sub-No. 335X), *Burlington Northern Railroad Company – Abandonment Exemption – Between Klickitat and Goldendale, WA* (not printed), served June 8, 2005. Here, KSLS has simply come forward with erroneous and misleading factual assertions. Because KSLS has submitted no credible evidence in support of its revocation request, it has failed to meet its burden of proof and its requested relief should be denied.

CONCLUSION

NKCR respectfully urges the Board to deny KSLS's requested relief. The Comments fall woefully short of demonstrating that regulation of the abandonment is necessary.

Respectfully submitted,

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in dark ink and is positioned above a horizontal line.

Karl Morell
Karl Morell & Associates
440 1ST Street, N.W.
Suite 440
Washington, D.C. 20001
(202) 595-9045

Attorney for:
NEBRASKA, KANSAS & COLORADO
RAILWAY, L.L.C.

Dated: March 19, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2018, I have caused a copy of the forgoing
Reply to be served on all parties of record by first class mail.

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in dark ink and is positioned above a horizontal line.

Karl Morell