

EP 749

ENTERED  
Office of Proceedings  
August 8, 2018  
Part of  
Public Record

STB Rulemaking proposal by NARPO to the STB

If you want a Rails for Trails “Horror Story”, then this email is for you. This story is described (at least up through 2011) in *Farmers Coop. v. United States*, 98 Fed.Cl. 797 (2011) and upon reconsideration *Farmers Coop. v. United States*, 100 Fed.Cl. 579 (2011).

This situation affects several landowners’ ownership of real estate located along these formerly operated Lines in the state of Kansas; the K&O operated a railroad line including a 10.7-mile railroad right-of-way from milepost 36.3 at Hanston, Kansas to milepost 47.0 at Jetmore, Kansas, in Hodgeman County, Kansas (the “Hodgeman corridor”) and a 46.8 mile rail line between milepost 589.2 at Coats, Kansas to milepost 636.0 at Protection, Kansas, in Comanche, Kiowa and Pratt counties in Kansas (the “CKP corridor”).

In August 2003, the K&O filed a Notice of Exemption to abandon the two Lines. Therein the railroad advised of its intent, now fulfilled, “to remove the rail, track, material and crossties.” Additionally, the Board authorized the abandonment of these railroad rights-of-way (ROW) in its decisions on November 13, 2007 (as well as similar orders on September 26, 2003, September 29, 2003, November 9, 2007, and December 29, 2008),

On November 12, 2003, the American Trails Association (“ATA”) filed comments before the STB, in part, requesting the issuance of a Notice of Interim Trail Use (“NITU”) for the purpose of rail banking. On November 25, 2003, a Decision and Notice of Interim Trail Use or abandonment (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), was served, reopening the proceeding and establishing a 180-day period for ATA to negotiate an interim trail use/rail banking agreement with K&O for acquisition of the respective rights-of-way. The K&O and the ATA, as trail operator, reached a railbanking agreement, and executed a Quit Claim Deed purporting to transfer to ATA the railroad’s interest in the rights-of-way. The tracks, ties, and other components were removed by K & O subsequent to the issuance of the November 2003 NITU but prior to the April 2004 quitclaim deed to ATA.” On October 25, 2007, ATA filed a notice of intent to terminate trail use over the above Lines, pursuant to 49 CFR 1152.29(d)(2), and requested that the NITU be vacated, effective November 5, 2007. By a STB Decision served on November 9, 2007, the Board reopened the proceeding and granted ATA’s request for vacation of the NITU. On February 25, 2008 ATA filed a “Disclaimer and Release” in the State of Kansas disclaiming all interest in these trails.

On February 4, 2008, the STB issued a NITU to Sunflower Recreational Trails, Inc. (“SRT”) establishing a 180-day period for SRT to negotiate with K&O for the CKP corridor. The negotiating period expired on the NITU on August 2, 2008. On December 16, 2008, SRT filed a request for issuance of a NITU for the Hodgeman corridor. The K&O and SRT were given a 180-day period to reach a mutually acceptable final agreement concerning rail banking. No agreement was reached within the 180-day period or any extension. Consequently, the K&O was once again given permission to fully abandon the Lines subject to compliance with the previously imposed environmental condition. The K&O has never filed a Notice of Consummation of Abandonment contemplated by 49 C.F.R. 1152.29(e)(2).

No trails organization has ever made any use of or any improvements or work on the ROW. K&O has never acted to fully abandon either Line. The STB has not since enforced any railroad obligations on these lines. The current status of the ROW is in limbo and has been mired in debate and lack of progress for over a decade. The ROW has been totally abandoned physically; all railroad assets have been removed for over a decade; neither the K&O or any other railroad is making any use of the ROW; ATA abandoned its Trail use rights in 2008; No trail use agreement was reached and the Sunflower NITU regarding the Hodgeman corridor expired in 2009; SRT also filed for a NITU to negotiate with K&O for the CKP corridor; that negotiating period expired in 2008; All NITU's have been vacated or expired without a permanent railbanking agreement. Mired in all this confusion and controversy K&O has been unwilling to progress with the formal abandonment of this ROW - all to the detriment of the rural Kansas adjacent landowners.

The Court in *Farmers Coop (Farmers Coop., Id., at 579)*, on reconsideration, accurately described the landowners' "quandary" as:

Inexplicably, despite having removed the track and having quitclaimed its interest in the corridors to ATA, which in turn never initiated any trail usage and then subsequently sought and obtained from the STB the termination of its obligations, K & O has apparently failed to file any notice of consummation of abandonment of the lines. Such notice is a necessary step under federal regulations to complete the process of abandonment and end STB jurisdiction over the lines.

The Court, acknowledging the "Plaintiffs' quandary," nonetheless reasoned that "it is not this court's province to answer Plaintiffs' question, "What then?" or address how they might best extricate themselves from the consequences of the railroad's failure to file the requisite notice of consummation, even though its abandonment of the rights-of-way seems evident under state law." (*Farmers Coop., Id., at 584*).

And now it is 2018 and the situation remains unchanged. Sunflower in conversations has asserted that it has a consummated trail use agreement, in spite of the findings of the Court of Claims that the period expired, but has not been able to produce one. (Presumably SRT is trying to leverage some position in order to provide financial gain.) The STB has no official records of these trails proceedings or agreements. The Railroad is unwilling to take any position or make any filing to abandon under these circumstances. And the landowners have now been deprived of their interest in the land for over 10 years.

If this sounds fair or equitable to anyone I would love to hear an explanation. This system is broken!

Marc Elster  
2030 E. 25th Place  
Lawrence, KS 66046  
(913) 226-9740 (m)  
marcelster@yahoo.com