

RICHARD R. WILSON, P.C.

888-454-3817 – Toll Free
814-419-8156 – FAX
rwilson@rrwilson.net (Email)

**Attorney at Law
A Professional Corporation
518 N. Center Street, Ste. 1
Ebensburg, PA 15931
(814) 419-8152**

851 12th Street,
Oakmont, PA 15139
(814) 935-8601



May 24, 2017
243542

The Honorable Rachel Campbell
Office of Proceeding
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
May 30, 2017
Part of
Public Record

Re: Knox & Kane Railroad Company – Abandonment Exemption – In Clarion,
Forest, Elk and McKean Counties, Pennsylvania; STB Docket No. AB-551 (Sub –
Docket No. 1X)

Dear Ms. Campbell:

In the above captioned proceeding, on December 8, 2009, the STB approved the request of the Kovalchick Family Trust (“KFT”) for issuance of an NITU to allow it to negotiate with Knox & Kane Railroad Company for interim trail use/railbanking for the right of way of a line of railroad known as the Clarion to Kinzua Branch extending from railroad milepost 95.3 near Clarion Junction to railroad milepost 165.2, near Mt. Jewett, PA for a distance of 69.9 miles in Clarion, Forest, Elk and McKean Counties, Pennsylvania. (Exhibit A) Knox & Kane Railroad and KFT reached an agreement, pursuant to 49 C.F.R. §1152.29 for interim trail use/railbanking for the entire length of this rail line and by letter dated April 16, 2010, counsel for Knox & Kane Railroad Company notified the Surface Transportation Board of this trail use/railbanking agreement. (Exhibit B)

The purpose of this letter is to advise the Board that on May 3, 2017, KFT and Headwaters Charitable Trust (“HCT”) entered into an Agreement of Sale whereby this railbanked right of way is to be conveyed to HCT for interim trail use subject to all the terms and conditions imposed by the prior STB certificate of interim trail use issued to KFT including representations that HCT is willing to assume financial and management responsibility for the railbanked right of way. (Exhibit C)

Accordingly, pursuant to 49 C.F.R. §1152.29(f), KFT and HCT respectfully request that the Surface Transportation Board reopen this proceeding and issue a Certificate of Interim Trail Use to HCT as the new owner/manager of this railbanked right of way. HCT will assume

The Honorable Rachel Campbell
May 24, 2017
Page 2

management responsibility for the line upon the issuance of the new Certificate. Given HTC's nonprofit status, it respectfully requests that the Board waive any filing fee related to the request.

Very truly yours,

RICHARD R. WILSON, P.C.

A handwritten signature in dark ink, appearing to read "Richard R. Wilson", with a long horizontal flourish extending to the right.

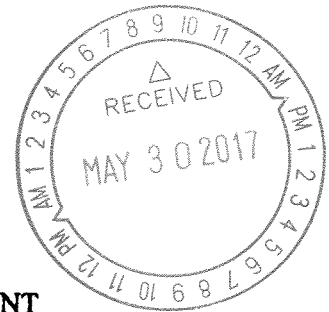
Richard R. Wilson, Esq.

RRW/bab

xc: Kovalchick Family Trust
Headwaters Charitable Trust

40412
DO

SERVICE DATE - DECEMBER 10, 2009



SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-551 (Sub-No. 1X)

KNOX AND KANE RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
CLARION, FOREST, ELK AND McKEAN COUNTIES, PA

Decided: December 8, 2009

Knox and Kane Railroad Company (Knox and Kane) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its entire line of railroad between milepost 95.3 at North Clarion Junction, PA, and milepost 165.2 at Mt. Jewett, PA, a distance of 69.9 miles, in Clarion, Forest, Elk and McKean Counties, PA. Notice of the exemption was served and published in the Federal Register on October 23, 2009 (74 FR 54873-74). The exemption was scheduled to become effective on November 24, 2009.

By decision and notice of interim trail use or abandonment (NITU) served on November 23, 2009, the proceeding was reopened and a 180-day period (until May 23, 2010) was authorized for McKean County Planning Commission, in conjunction with Clarion, Forest and Elk Counties (collectively, the Counties), to negotiate an interim trail use/rail banking agreement with Knox and Kane for the right-of-way in this proceeding. That decision and notice also imposed a public use condition (which is scheduled to expire on May 23, 2010) and five environmental conditions recommended by the Board's Section of Environmental Analysis.

On November 23, 2009, The Kovalchick Family Trust (KFT), filed a request for the issuance of a NITU for the line under the National Trails System Act, 16 U.S.C. 1247(d), and for a public use condition under 49 U.S.C. 10905,¹ in order to negotiate with Knox and Kane for acquisition of the right-of-way for use as a recreational trail. KFT also submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reactivation for rail service. Knox and Kane has indicated its willingness to negotiate with KFT in addition to the Counties for interim trail use.

¹ Although KFT seeks a public use condition, there is no need to consider the request because a public use condition was already imposed in the November 23, 2009 decision. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use.

STB Docket No. AB-551 (Sub-No. 1X)

Because KFT's request complies with the requirements of 49 CFR 1152.29 and Knox and Kane is willing to negotiate with KFT for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days from the effective date of the abandonment, Knox and Kane may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on October 23, 2009, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit KFT to negotiate with Knox and Kane for trail use for a period of 180 days commencing from the November 24, 2009 effective date of the abandonment (until May 23, 2010), subject to the environmental conditions imposed in the November 23 decision and notice.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations of the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by May 23, 2010, interim trail use may be implemented. If no agreement is reached by that time, Knox and Kane may fully abandon the line, subject to the environmental conditions imposed in the November 23 decision and notice.
7. This decision and notice is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

226829

MCCARTHY, SWEENEY & HARKAWAY, P.C.

SUITE 700

1825 K STREET, N.W.

WASHINGTON, D.C. 20037

(202) 775-5560

FAX (202) 775-5574

Andrew P. Goldstein

andgold@msb.com

www.msbs.com

April 16, 2010

Via Hand Delivery

Hon. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings

APR 16 2010

Part of
Public Record



RE: STB Docket No. AB-551 (Sub-Docket No. 1X)
Knox & Kane Railroad Company-Abandonment Exemption-
in Clarion, Forest Elk and McKean Counties, Pennsylvania

Dear Secretary Quinlan,

In the above-entitled proceeding, pursuant to the Decision and Notice of Interim Trail Use or Abandonment ("NITU"), decided on November 23, 2009, the Surface Transportation Board ("STB") approved the request of the McKean County Planning Commission, in conjunction with Clarion, Forest and Elk Counties, to allow the Commission and the Counties to negotiate an interim trail use and rail banking agreement with the Knox & Kane Railroad Company ("Knox & Kane") for interim trail use/rail banking for the right-of-way of a line of railroad known as the Clarion to Kinzua Branch, extending from railroad milepost 95.3 near Clarion Junction, to railroad milepost 165.2, near Mount Jewett, for a distance of 69.9 miles in Clarion, Forest, Elk and McKean Counties, Pennsylvania.

In the above-entitled proceeding, pursuant to the NITU, decided on December 8, 2009, the STB also approved the request of The Kovalchick Family Trust ("KFT") for issuance of a NITU to allow it to negotiate with Knox & Kane, for interim trail use/rail banking for the right-of-way of a line of railroad known as the Clarion to Kinzua Branch, extending from railroad milepost 95.3 near Clarion Junction, to railroad milepost 165.2, near Mount Jewett, for a distance of 69.9 miles in Clarion, Forest, Elk and McKean Counties, Pennsylvania.

near Mount Jewett, for a distance of 69.9 miles in Clarion, Forest, Elk and McKean Counties, Pennsylvania.

Please be advised that on April 16, 2010, Knox & Kane and the KFT reached an agreement, pursuant to 49 C.F.R. § 1152.29, for interim trail use/rail banking for the line of railroad known as the Clarion to Kinzua Branch, extending from railroad milepost 95.3 near Clarion Junction, to railroad milepost 165.2, near Mount Jewett, for a distance of 69.9 miles in Clarion, Forest, Elk and McKean Counties, Pennsylvania.

Please acknowledge receipt of this letter by date stamping the enclosed copy of this letter and returning it to my attention in the enclosed self-addressed, stamped envelope. Ten (10) additional copies of this letter are enclosed for the STB's use and distribution.

By my signature below, I certify service upon Deborah L. Lunden of the McKean County Planning Commission, 17137 Route 6, Smethport, Pennsylvania, 16749.

Respectfully Submitted,



Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, P.C.
1825 K Street, N.W.
Suite 700
Washington, D.C. 20006
Phone: (202) 775-2508

Attorney for
Knox & Kane Railroad Company

CC: McKean County Planning Commission.



Headwaters Charitable Trust
434 State St. – Suite 1
Curwensville, PA 16833
Phone 814-236-4333
Fax 814-236-4334
info@hwct.org

The Honorable Rachel Campbell
Office of Proceeding
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

May 24, 2017

Re: Knox & Kane Railroad Company – Abandonment Exemption – In Clarion, Forest, Elk and McKean Counties, Pennsylvania; STB Docket No. AB-551 (Sub –Docket No. 1X)

Dear Ms. Campbell:

This request is filed on behalf of Headwaters Charitable Trust (“HCT”) which is a 501(c)(3) nonprofit trust interested in the preservation of the railbanked right of way in the above captioned proceeding for conservation and recreational use under the provisions of the National Trail Systems Act. The railroad right of way in this proceeding is presently railbanked under the Board’s NITU issued to the Kovalchick Family Trust by Order dated December 8, 2009. HCT has entered into an acquisition transaction with Kovalchick Family Trust to acquire and manage this railbanked right of way. Accordingly, HCT makes this statement of willingness to assume financial responsibility. In order to continue interim trail use and railbanking under §8(d) of the National Trail Systems Act, 16 U.S.C. 1247(d) and 49 C.F.R. §1152.29, Headwaters Charitable Trust is willing to assume full responsibility for management of this rail line, for any legal liability arising out of the transfer or use of the subject line for recreational trail purposes and for the payment of any and all taxes that may be levied or assessed against the right of way owned by Kovalchick Family Trust or its predecessors in title.

A map depicting the right of way is attached hereto. HCT acknowledges that the use of the right of way is subject to the Trust’s continuing obligation to meet its responsibility described above and subject to possible future reconstruction and reactivation of the right of way of rail service.

By my signature below, I certify service upon the Kovalchick Family Trust by U.S. Mail, postage prepaid first class this 24 day of May 2017.

Respectfully submitted,

M. Jane French, Executive Director
Headwaters Charitable Trust