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SERVICE DATE – OCTOBER 17, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1032 (Sub-No. 2)

LANDOWNERS—PETITION FOR DECLARATORY ORDER  
AND INJUNCTIVE RELIEF

Decided: October 16, 2019

In Nebraska, Kansas & Colorado Railway—Abandonment Exemption—in Decatur, Norton, and Phillips Counties, Kan., and Harlan County, Neb., Docket No. AB 1032X, Nebraska, Kansas & Colorado Railway, L.L.C. (NKCR) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon 57.31 miles of rail line in Kansas and Nebraska (the Lines). Notice of the exemption was served and published in the Federal Register on August 7, 2015 (80 Fed. Reg. 47,557), and the exemption became effective on September 8, 2015. NKCR has sought and received extensions of the consummation deadline, most recently in a decision served on February 22, 2019, which extended the deadline to March 1, 2020.

On June 11, 2019, certain landowners who are plaintiffs in Flying S. Land Co. v. United States, No. 15-1253L (Fed. Cl., filed Apr. 10, 2018) and Dawson v. United States, No. 15-1268L (Fed. Cl., filed Apr. 10, 2018) (collectively, Flying S. Landowners), filed a petition for a declaratory order and injunctive relief. The Flying S. Landowners seek to prevent the transfer of the Lines prior to consummation of abandonment and also request an order directing NKCR to consummate abandonment.

On July 2, 2019, certain landowners who are plaintiffs in Arnold v. United States, No. 15-1252L (Fed. Cl., filed Apr. 10, 2018) (Arnold Landowners) filed a petition to intervene, joining for the most part in the arguments of the Flying S. Landowners, and further seeking “injunctive relief, declaratory orders and [issuance of an] abandonment certificate.” (Arnold Landowners Pet. 1.)

On September 3, 2019, in Docket No. AB 1032X, NKCR filed its notice of consummation of abandonment of the Lines pursuant to 49 C.F.R. § 1152.29(e)(2). On September 4, 2019, Flying S. Landowners submitted a filing in Docket No. AB 1032 (Sub-No. 2) stating that their petition is now moot and seeking to withdraw it.

Because NKCR has consummated its abandonment, the Lines are no longer under the Board’s jurisdiction and the requests for relief by the Flying S. Landowners and Arnold Landowners are moot. Consummation of abandonment pursuant to the notice requirement of 49 C.F.R. § 1152.29(e)(2) conclusively signifies that the railroad has exercised the authority

granted and the property is no longer part of the interstate rail network. See Honey Creek R.R.—Pet. for Declaratory Order, FD 34869, slip op. at 4-5 (STB served June 4, 2008); see also Hayfield N. R.R. v. Chi. & N. W. Transp. Co., 467 U.S. 622, 633-34 (1984) (consummation of abandonment “terminates the [Board’s] jurisdiction”); Baros v. Tex. Mex. Ry., 400 F.3d 228, 234 (5th Cir. 2005) (“Once a rail carrier abandons a line, the line is no longer part of the national transportation system, and the [Board’s] jurisdiction terminates.”). Accordingly, Flying S. Landowners’ request to withdraw their petition will be granted and Arnold Landowners’ petition to intervene and for other relief will be denied as moot, and the proceeding will be dismissed. See generally Wis. & Calumet R.R.—Notice of Interim Trail Use & Termination of Modified Certificate, FD 30724 (Sub-No. 2), slip op. at 2 n.4 (STB served Mar. 11, 1998) (denying petition to intervene in opposition to request for a notice of interim trail use as moot where the “Board no longer ha[d] jurisdiction over the line”).<sup>1</sup>

It is ordered:

1. Flying S. Landowners’ request to withdraw their petition is granted, and the proceeding is dismissed.
2. Arnold Landowners’ petition to intervene and for other relief is denied as moot.
3. Flying S. Landowners’ July 15, 2019 motion for leave to file a surreply is denied as moot.
4. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

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<sup>1</sup> The Flying S. Landowners also filed a July 15, 2019 motion for leave to file a surreply, in response to NKCR’s July 1 reply to the Flying S. Landowners’ petition for a declaratory order and injunctive relief, which will be denied as moot in light of this decision.