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SERVICE DATE - JANUARY 29, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-406 (Sub-No. 7X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY
--ABANDONMENT EXEMPTION--
IN BARTON, ELLSWORTH AND RICE COUNTIES, KS

Decided: January 27, 1998

By decision served and notice published in the Federal Register on April 29, 1997 (62 FR 23291), the Board granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 permitting the abandonment by Central Kansas Railway, Limited Liability Company (CKR) of a 53.2-mile portion of its Little River Subdivision from milepost 577.1 near Lyons to milepost 594.1 near Lorraine, then from milepost 20.7 near Lorraine to milepost 56.9 near Galatia, in Barton, Ellsworth and Rice Counties, KS. The exemption became effective on May 29, 1997.

On May 19, 1997, James D. Jennings of Jennings & Co. (Jennings) filed a request for issuance of a notice of interim trail use/rail banking (NITU) to enable him to negotiate with CKR for use of the line as a trail. By letter filed June 24, 1997, CKR indicated that the abandonment had not been consummated and that it was willing to negotiate with Jennings. In a decision served July 1, 1997, the Board issued a NITU, authorizing a 180-day period for Jennings to negotiate an interim trail use/rail banking agreement with CKR for the right-of-way. The NITU negotiating period expired on December 28, 1997.

On December 24, 1997, Iowa Trails Council (ITC) filed a request for issuance of a new NITU for the above-described rail line to enable it to negotiate with CKR for use of the line as a trail.¹ ITC submitted the requisite statement of willingness to assume financial responsibility for interim trail use/rail banking in compliance with 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service. By letter filed December 24, 1997, CKR states that it is agreeable to the issuance of a NITU to ITC.

Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-

¹ Jennings filed a letter on December 24, 1997, advising the Board that he is agreeable to the issuance of a NITU to ITC. On January 26, 1998, Jennings submitted a fax transmittal indicating that he is no longer interested in negotiating for interim trail use/rail banking in this proceeding.

way² and the carrier is willing to enter into negotiations. Inasmuch as CKR has not consummated the abandonment and is willing to negotiate for trail use, a new NITU will be issued under 49 CFR 1152.29, and ITC will be substituted as the new negotiating party. The parties may negotiate a trail use agreement during the 180-day period, which commenced on December 28, 1997. If the parties reach a mutually acceptable final agreement, further Board approval will not be necessary. If no agreement is reached within the 180 days, CKR may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for rail purposes.

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. The decision served and published in the Federal Register on April 29, 1997, exempting the abandonment by CKR of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from December 28, 1997, or until June 26, 1998.
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 imposed on the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user continuing to meet the financial obligations for the right-of-way.
5. If the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that trail use be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by June 26, 1998, interim trail use may be implemented. If no agreement is reached by that date, CKR may fully abandon the line.
7. This decision is effective on its service date.

² See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--in Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

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By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

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