

SERVICE DATE – NOVEMBER 5, 2009

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-870X

BUTLER COUNTY, KANSAS—ABANDONMENT EXEMPTION—IN BUTLER
COUNTY, KS

Decided: November 2, 2009

Butler County, Kansas (County), filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon its entire 10.6-mile line of railroad between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, KS. Notice of the exemption was served and published in the Federal Register on July 2, 2004 (69 FR 40472).¹ By decision and notice of interim trail use or abandonment (NITU) served on June 2, 2005, the proceeding was reopened and Butler County Economic Development (BCED) was authorized to negotiate a trail use agreement with the County for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29 in order to rail bank its own line.² By letter filed on June 3, 2005, BCED notified the Board that BCED and the County had consummated a trail use/rail banking agreement for the line.

On September 28, 2009, BCED and the City of Augusta, KS (Augusta), (collectively, petitioners), filed a joint petition requesting that Augusta be substituted for BCED as the interim trail manager for the 1.58-mile segment of the line located between milepost 483.62 and milepost 485.2. Petitioners state that the County supports this request.

Petitioners have submitted a copy of the extant NITU, Augusta's statement of willingness to assume financial responsibility for interim trail use and rail banking, and Augusta's acknowledgement that use of the right-of-way for trail purposes is subject to possible future

¹ By decision served on August 2, 2004, the proceeding was reopened and the exemption was made subject to the condition that the County consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice before disturbing or destroying any geodetic station markers.

² A railroad is permitted to rail bank its own line where the railroad represents that the property is suitable for interim trail use and that it will assume financial responsibility for the line. See Roaring Fork Railroad Holding Authority—Abandonment Exemption—in Garfield, Eagle and Pitkin Counties, CO, STB Docket No. AB-547X, slip op. at 4 n.11 (STB served Oct. 16, 1998).

reconstruction and reactivation of the right-of-way for rail service. Petitioners also have indicated that the transfer of responsibility for the segment of the right of way will be within 30 days of the Board's decision authorizing the substitution. Petitioners' submission meets the requirements of 49 CFR 1152.29(f). Accordingly, petitioners' request will be granted.

This decision 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 NITU served on June 2, 2005, is modified to vacate from that NITU the segment of the right-of-way between milepost 483.62 and milepost 485.2.
3. A replacement NITU applicable to Augusta as interim trail user is issued for the segment of the right-of-way between milepost 483.62 and milepost 485.2, effective on the service date of this decision and notice, subject to any environmental conditions that remain in effect.
4. The new trail user is required 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.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the new user's continuing to meet the financial obligations for the right-of-way.
6. If the new trail 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.
7. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary