

LAW OFFICES  
FRITZ R. KAHN, P.C.  
EIGHTH FLOOR  
1920 N STREET, N.W.  
WASHINGTON, D.C. 20036-1601  
(202) 263-4152  
FAX (202) 331-8330  
e-mail: xiccg@worldnet.att.net

ORIGINAL



July 13, 2004

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW (7<sup>th</sup> fl.)  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

JUL 13 2004

Part of  
Public Record

Dear Secretary Williams:

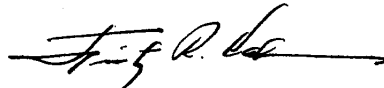
Enclosed for filing in each of STB Dockets No. AB-471 (Sub-No. 4X), South Kansas and Oklahoma Railroad Company—Abandonment Exemption—In Crawford, Wilson, Elk and Greenwood Counties, KS, and No. AB-563 (Sub-No. 1X), Kansas Eastern Railroad, Inc.—Abandonment Exemption—In Butler and Greenwood Counties, are the original and ten copies of the Notice of Intent to Terminate Trail Use of American Trail Association, Inc. 211558

Additional copies of this letter and of the Notice are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

Service of the this letter and the Notice has been effected by mailing copies thereof to the applicant railroads.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,

  
Fritz R. Kahn

enc.

ORIGINAL

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423



STB Docket No. AB-471 (Sub-No. 4X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --  
IN CRAWFORD, WILSON, ELK AND GREENWOOD COUNTIES, KS

STB Docket No. AB-563 (Sub-No. 1X)

KANSAS EASTERN RAILROAD, INC  
-- ABANDONMENT EXEMPTION --  
IN BUTLER AND GREENWOOD COUNTIES, KS

NOTICE OF INTENT TO TERMINATE TRAIL USE  
OF  
AMERICAN TRAILS ASSOCIATION, INC.

Fritz R. Kahn  
Fritz R. Kahn, P.C.  
1920 N Street, NW (8<sup>th</sup> fl.)  
Washington, DC 20036-1601  
Tel.: (202) 263-4152

Attorney for

AMERICAN TRAILS ASSOCIATION, INC.

Dated: July 13, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423

---

STB Docket No. AB-471 (Sub-No. 4X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --  
IN CRAWFORD, WILSON, ELK AND GREENWOOD COUNTIES, KS

---

STB Docket No. AB-563 (Sub-No. 1X)

KANSAS EASTERN RAILROAD, INC  
-- ABANDONMENT EXEMPTION --  
IN BUTLER AND GREENWOOD COUNTIES, KS

---

ENTERED  
Office of Proceedings  
JUL 13 2004  
Part of  
Public Record

NOTICE OF INTENT TO TERMINATE TRAIL USE  
OF  
AMERICAN TRAILS ASSOCIATION, INC.

American Trails Association, Inc., ("ATA"), pursuant to 49 C.F.R. 1152.29(d)(2), gives notice of its intent to terminate its trail use of segments of certain railroad lines' rights-of-way acquired by ATA, namely, between Milepost 415.0 at Fredonia, KS 66736, and Milepost 438.5 at Severy KS 67137, on the former line of the South Kansas and Oklahoma Railroad Company, Inc. ("SKO") and between Milepost 471.0 near Leon, KS 67074,, and Milepost 438.5 at Severy, KS 67137, on the former line of the Kansas Eastern Railroad, Inc. ("KER"), a distance of 56.0 miles in Butler, Elk and Greenwood Counties, KS.

2. A copy of the Board's Decision and NITU, served December 29, 2000, in the SKO proceeding, and a copy of the Board's Decision and NITU, served July 5, 2000, in the KER proceeding, are attached.

3. ATA asks that the NITU's, insofar as they relates to the above-described line segments, be vacated as of July 31, 2004..

4. Copies of the reissued Notice of Exemption should be sent, as follows:

a. The abandonment exemption applicants:

South Kansas & Oklahoma Railroad, Inc.  
315 W. 3<sup>rd</sup> St.  
Pittsburgh, KS 66762

Kansas Eastern Railroad, Inc.  
315 West 3<sup>rd</sup> Street  
Pittsburgh, KS 66762

b. The owner of the right-of-way and trail user:

American Trails Association, Inc.  
P. O. Box 26421  
Salt Lake City, UT 84126

WHEREFORE, the trail user, American Trails Association, Inc., asks that it be relieved of its obligations under the Trails Act with respect to the above-described line segments.

Respectfully submitted,

AMERICAN TRAILS ASSOCIATION, INC.

By its attorney,



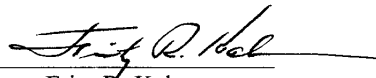
Fritz R. Kahn  
Fritz R. Kahn, P.C.  
1920 N Street, NW (8<sup>th</sup> fl.)  
Washington, DC 20036-1601  
Tel.: (202) 263-4152

Dated: July 13, 2004

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing pleading upon each of the parties  
by mailing them copies thereof, with first-class postage prepaid.

Dated at Washington, DC, this 13th day of July 2004

  
Fritz R. Kahn

31533  
DO

SERVICE DATE - DECEMBER 29, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-471 (Sub-No. 4X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY--  
ABANDONMENT EXEMPTION--IN CRAWFORD, WILSON, ELK AND GREENWOOD  
COUNTIES, KS AND OSAGE AND TULSA COUNTIES, OK

Decided: December 22, 2000

South Kansas and Oklahoma Railroad Company (SKO) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon: (1) a 35-mile line of railroad between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall, in Osage and Tulsa Counties, OK; (2) a 6-mile line of railroad between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee, in Crawford County, KS; and (3) a 23.5-mile line of railroad between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk, and Greenwood Counties, KS. Notice of the exemption was served and published in the Federal Register on October 6, 2000 (65 FR 59891-92). On October 10, 2000, the Board received a notice of intent to file an offer of financial assistance (OFA) to purchase the 6-mile portion of the right-of-way between milepost 359.0 and milepost 365.0 in Crawford County, KS. While no OFA was ultimately filed, the effectiveness of the exemption was delayed until November 30, 2000, to permit the potential offeror to obtain needed information. On November 29, 2000, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for SKO to negotiate a trail use agreement with: (1) the City of Pittsburg (City) for the 6-mile portion of the right-of-way between milepost 359.0 near Pittsburg and milepost 365.0 near Cherokee, in Crawford County, KS; and (2) the Trust for Public Land (TPL) for the 35-mile portion of the right-of-way between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall.<sup>1</sup>

On December 7, 2000, American Trails Association (ATA) late-filed a request for issuance of a NITU, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for the 23.5-mile portion of the right-of-way between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk and Greenwood Counties, KS.<sup>2</sup> ATA submitted a statement indicating

---

<sup>1</sup> The November 29 decision also imposed a 180-day public use condition that is scheduled to expire on May 29, 2001.

<sup>2</sup> The October 6 notice provided that trail use/rail banking requests had to be filed by October 16, 2000. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and (continued...)

its willingness to assume full financial 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 payment of any and all taxes that may be levied 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 future reactivation for rail service. By facsimile submitted on December 15, 2000, SKO has advised the Board that it has not consummated the abandonment of the 23.5-mile line and that it is willing to negotiate for trail use with ATA.

In a submission filed December 4, 2000, the Greenwood County Commissioners (County Commissioners) oppose trail use in southern Greenwood County, where part of the 23.5-mile line from Fredonia to Severy lies. The County Commissioners state that the abandoned rails and railroad right-of-way should revert back to the adjacent land owners of its county.<sup>3</sup>

Under the Trails Act and our implementing rules, if a prospective trail user requests a trail condition and the carrier indicates its willingness to negotiate a trail agreement, under the Trails Act the Board has a limited ministerial role. See Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990) (Goos). To invoke the Trails Act, a prospective trail sponsor needs only to file a request accompanied by the necessary statement of willingness to assume liability and acknowledgment that interim trail use is subject to possible reinstitution of rail service. See National Ass'n of Reversionary Property Owners v. STB, 158 F.3d 135, 138 (D.C. Cir 1998); 49 CFR 1152.29(a) and (d). If the railroad indicates its willingness to negotiate, the Board must then issue a NITU. Goos, 911 F.2d at 1295.

Because ATA's request complies with the requirements of 49 CFR 1152.29 and SKO has not abandoned the line and is willing to negotiate for trail use, a NITU will be issued for the portion of the right-of-way between milepost 438.5 at Severy and milepost 415.0 at Fredonia in Wilson, Elk and Greenwood Counties, KS.

---

<sup>2</sup>(...continued)

June 27, 1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the ATA's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company-- Abandonment Exemption--in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

<sup>3</sup> The County Commissioners' letter in opposition did not include a certificate of service, and thus there is no indication that it was served on SKO. Under 49 CFR 1104.12, every document filed with the Board should include a certificate of service showing simultaneous service upon all parties to the proceeding.

This decision does not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The County Commissioners' letter will be treated as correspondence and placed in the public docket.
3. Upon reconsideration, the exemption of the abandonment described above is subject to the condition that SKO keep intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track materials) for the 23.5-mile portion of the right-of-way between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk and Greenwood Counties, KS, for a period of 180 days from November 30, 2000 (until May 29, 2001).
4. 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.
5. 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 for the right-of-way.
6. 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.
7. If an agreement for interim trail use/rail banking is reached by May 29, 2001, interim trail use may be implemented. If no agreement is reached by that time, SKO may fully abandon the line.

STB Docket No. AB-471 (Sub-No. 4X)

8. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary

31140  
DO

SERVICE DATE - JULY 5, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-563 (Sub-No. 1X)

KANSAS EASTERN RAILROAD, INC.--ABANDONMENT  
EXEMPTION--IN BUTLER AND GREENWOOD COUNTIES, KS

Decided: June 30, 2000

Kansas Eastern Railroad, Inc. (KER) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 44.5-mile line of railroad between milepost 438.5 at Severy, and milepost 483.0 near Augusta, in Butler and Greenwood Counties, KS. Notice of the exemption was served and published in the Federal Register on August 25, 1999 (64 FR 46471).<sup>1</sup> On December 10, 1999, a decision and notice of interim trail use or abandonment (NITU) was served that reopened the proceeding to implement interim trail use/rail banking for the entire line under 49 CFR 1152.29 and the National Trails System Act, 16 U.S.C. 1247(d), and provided a 180-day period for KER to negotiate an agreement with Butler County for portions of the right-of-way between milepost 438.5 and milepost 476.4, and between milepost 476.65 and milepost 483.0 in this proceeding. The negotiation period under the NITU expired on March 22, 2000.<sup>2</sup>

By petition filed June 23, 2000, American Trails Association, Inc. (ATA), a new negotiation party, filed a request for a NITU for portions of the right-of-way between milepost 438.5 at Severy and milepost 476.4 and between milepost 476.65 and milepost 483.0 near Augusta in Butler and Greenwood Counties, KS. ATA submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR

---

<sup>1</sup> By decision served September 23, 1999, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to the conditions that KER: (1) consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers; (2) consult with the Kansas Department of Health and Environment in Topeka to determine if a permit is required under section 402; and (3) retain its interest in and take no steps to alter the historic integrity of the Beaumont St. Louis and San Francisco Railroad Water Tank until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

<sup>2</sup> By letter filed May 2, 2000, KER notified the Board that it consummated the abandonment of the right-of-way between milepost 476.4 and milepost 476.65 and that it entered an agreement with the State of Kansas for the sale of that line segment which is needed by the State for the reconstruction of a highway.

1152.29 and acknowledged that the use of the right-of-way as a trail is subject to possible future reconstruction and reactivation of the right-of-way for rail service. On June 27, 2000, KER advised the Board that it is willing to negotiate with ATA for interim trail use and that it has not consummated the abandonment of the NITU lines.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way<sup>3</sup> and the carrier is willing to enter into negotiations. Inasmuch as KER has not consummated the abandonment and is willing to negotiate with ATA for the right-of-way, a NITU will be issued with the trail use negotiation period running for 180 days from the service date of this decision or until January 1, 2001. If no agreement is reached within that time period, KER may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

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. Upon reconsideration, the notice of exemption served and published in the Federal Register on August 25, 1999, 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, for portions of the line extending between milepost 438.5 and milepost 476.4, and between milepost 476.65 and milepost 483.0 until January 1, 2001, subject to the environmental conditions imposed in the September 23, 1999 decision.
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 (if 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.
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 for the right-of-way.

---

<sup>3</sup> 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).

STB Docket No. AB-563 (Sub-No. 1X)

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 January 1, 2001, interim trail use may be implemented. If no agreement is reached by that time, KER may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary