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Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: Butler County, Kansas—Abandonment Exemption—Butler County, KS
STB Docket No. AB-870X

Dear Secretary Williams:

Please accept the additional \$50.00 fee attached for a total \$200, as we were not aware of the filing change. This comment is filed on behalf of Prairie Travelers, Inc. a not-for-profit organization which was issued a Notice of Interim Trail Use for a rail line in Sedgwick County, Kansas [STB Docket AB-406 (Sub No. 14X) service date December 2, 2002].

By my signature below, I certify service upon the County of Butler, Kansas by U.S. Mail, postage prepaid, first class, this 4th day of August, 2004.

Respectfully submitted,

Cecile B. Kellenbarger
Treasurer, Prairie Travelers, Inc.
7211 Bainbridge
Wichita, Kansas 67226

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Mr. Vernon A. Williams
Secretary
Surface Transportation Board
12th & Constitution Ave., N.W.
Washington, DC 20423



Re: Butler County, Kansas—Abandonment Exemption—Butler County, KS
STB Docket No. AB-870X

Dear Secretary Williams:

This comment should be treated as a protest or petition for reconsideration in the above-captioned proceeding. This comment is filed on behalf of Prairie Travelers, Inc. a not-for-profit organization which was issued a Notice of Interim Trail Use for a rail line in Sedgwick County, Kansas [STB Docket AB-406 (Sub No. 14X) service date December 2, 2002] and hereinafter referred to as "Commenter".

While not taking a position on the merits of this abandonment, Commenter requests issuance of a Public Use Condition as well as a Notice of Interim Trail Use rather than an outright abandonment authorization between railroad milepost 483.62 near Augusta and railroad milepost 494.72 near Andover a distance of 10.6 miles in Butler County, Kansas.

Public Use Condition

Commenter requests the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except of public use on reasonable terms. The justification for this condition is that the corridor will connect with a planned rail-trail between Wichita and Andover which the City of Wichita plans to develop. This latter trail will ultimately connect with Commenter's railbanked corridor within Sedgwick County. The corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. In addition, the corridor provides important wildlife habitat and greenspace and its preservation as a recreational trail is consistent with that end. The time period sought is 180 days from the effective date of the abandonment authorization. Commenter needs that much time because we have not had an opportunity to commence negotiations with the carrier.

An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels as well as rock ballast. The justification for this condition is that these structures and surfacing have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

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Interim Trail Use

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, Commenter also makes the following request:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and railbanking under Section 8(d) of the National Trails system Act, 16 U.S.C. & 1247(d), and 49 C.F.R. & 1152.29, Prairie Travelers, Inc. is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by the County of Butler, Kansas.

The property, known as extends from railroad milepost 483.62 near Augusta to railroad milepost 494.72 near Andover a distance of 10.6 miles in Butler County, Kansas. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. AB-870X.

A map depicting the right-of-way is attached.

Prairie Travelers, Inc. acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Intentions of Butler County, Kansas

In conversations with the administrator of the Butler County, Kansas (hereinafter "County") it was determined that the County intends to railbank the rail line but not develop a trail in the corridor. The County only intends to railbank the line for possible use as a corridor for underground utilities. Congress clearly intended under Section 8(d) that recreational trails be constructed on former railroad beds while the rail corridors are held in a "rail bank". A railbanker cannot use the Act for its own purposes. A railbanker must intend to construct a trail when applying under Section 8(d) for railbanking/interim trail use. Under Kansas law (K.S.A. 58-3213) a nongovernmental trail user must present a final project plan to affected counties and cities. Further, it must develop the trail within two years if the rail corridor lies solely within one county. Although these provisions apply only to nongovernmental entities, it can also be asserted that a governmental entity which is serious about developing a trail should prepare a project plan. Further, Federal courts have ruled that subsurface rights are held by the underlying fee holder and not the holder of the rail rights-of-way or easements. Thus, the County cannot legally place subsurface underground utilities within the rail corridor without purchasing subsurface rights from adjacent landowners. So, in essence if the County railbanks the corridor it would be holding the corridor for no purpose whatsoever. Clearly, the County will be misusing the Trails Act if it applies for a NITU if it has no intention of constructing a trail. Thus, Commenter requests that the STB issue a Notice of Interim Trail Use to Commenter and not issue a Notice of Interim Trail Use to the County unless it can provide clear and convincing evidence it will develop a trail within a reasonable period of time.

By my signature below, I certify service upon the County of Butler, Kansas by U.S. Mail, postage prepaid, first class, this 28th day of July, 2004.

Respectfully submitted,



Cecile B. Kellenbarger
Treasurer, Prairie Travelers, Inc.
7211 Bainbridge
Wichita, Kansas 67226

GENERAL HIGHWAY MAP BUTLER COUNTY KANSAS

PREPARED BY THE
KANSAS DEPARTMENT OF TRANSPORTATION
BUREAU OF TRANSPORTATION PLANNING

IN COOPERATION WITH THE
U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

