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



ENTERED
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SEP 23 2004
Part of
Public Record

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

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

PETITION TO INTERVENE,
PETITION FOR DENIAL OF TRAIL USE REQUEST,
AND PETITION FOR PERMISSION TO CONDUCT LIMITED DISCOVERY
UPON BUTLER COUNTY

Date: September 22, 2004

Cecilia Fex
ACKERSON KAUFFMAN FEX, PC
1666 K Street, NW, Suite 1010
Washington, DC 20006-1217
Office: (202) 833-8833
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fex@ackersonlaw.com

The Petitioner David L. Murfin is a Kansas resident who owns certain real estate located in Sections 34 and 35, Township 27 South, Range 8 East, and Sections 2, 3, 11 and 12, Township 28 South, Range 8 East, Greenwood County, Kansas. As such, pursuant to Kansas property law, he holds the reversionary interest to a railroad right of way located within the boundaries of his real estate. Petitioner requests leave to intervene as a landowner whose interests are impacted by the subject right of way and in order to oppose Butler County's late-filed request of September 7, 2004, for the issuance of a NITU on the subject right of way.

For the reasons set out below, the Petitioner requests the Board deny Butler County's late-filed request to the Board for the issuance of a NITU on the segments at issue in the Board's recent, July 31, 2004 decision, in which the Board revoked the NITU for those segments and authorized the abandonment of those lines. In addition, pursuant to 49 C.F.R. §1117.1 and/or § 1121.2, Petitioner requests the Board permit Petitioner to conduct certain discovery upon Butler County and leave to supplement this Petition, as necessary, within 45 days of this filing.

FACTS AND PROCEDURAL HISTORY

In 1999, Kansas Eastern Railroad, Inc. ("KER") and Southern Kansas and Oklahoma Railroad Company ("SKO") filed a Notice of Exemption under 49 C.F.R. § 1152 subpart F, for KER to abandon, and SKO to discontinue, its trackage rights over a rail line between milepost 438.5, at Severy, and milepost 483.0 near Augusta, in

Greenwood and Butler Counties, Kansas. *See e.g., Kansas Eastern RR, Inc. – Abandonment Exemption – In Butler and Greenwood Counties, KS*, STB Docket No. AB-563 (Sub-No. 1X); *South Kansas and Oklahoma RR, Inc. – Discontinuance of Service Exemption – In Butler and Greenwood Counties, KS*, STB Docket No. AB-471 (Sub-No. 4X) (STB served August 25, 1999) (“*KER & SKO Consolidated*”).

In their Notice of Exemption, KER and SKO certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past two years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 C.F.R. § 1105.7 (environmental reports), 49 C.F.R. § 1105.8 (historic reports), 49 C.F.R. § 1105.11 (transmittal letter), 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) had been met.

On August 25, 1999, the Board issued a Notice of the above-described filing, and established a deadline of September 7 and September 14, 1999, for trail use requests, and for public use requests, respectively. The deadlines for filing trail use and public use requests expired with no such filings. *KER & SKO Consolidated*, slip. op. at 1.

On October 19, 1999, Butler County, Kansas late-filed by fax, a trail use request

and for public use condition, representing to the Board that they desired to negotiate with KER for use of the right of way for a recreational trail. In a Decision served December 10, 1999, the Board granted the County's late-filed request except as it pertained to a segment of the line the Railroad reported to have already abandoned to the State of Kansas. The Board specified a deadline for the County and the Railroad to reach a trail use agreement. *Id.*

On March 22, 2000, the negotiation period under the NITU expired, with no trail use agreement having been reached by the County and the Railroad.

On or about May 2, 2000, Kansas Eastern Railroad, Inc. filed a Consummation Notice for that portion of its line between mile post 476.4 and milepost 476.65, and stated that it had sold that portion of its line to the State of Kansas for the State's highway reconstruction. By this transaction, the railroad right of way was broken into non-contiguous pieces.

On or about June 23, 2000, American Trails Association, Inc. ("ATA") filed a Trail Use Request for the KER right of way that was not abandoned and that was the subject of the *KER & SKO Consolidated* proceedings. The Board granted the request to reopen the matter for trail use negotiations. On July 7, 2000, ATA notified the Board that a trail use agreement had been reached. Thus, pursuant to the Board's authority, a trail use agreement had been authorized for those segments of right of way at mile post marker 438.5 near Severy in Greenwood County, to mile post marker 476.4 in Butler County, and

from mile post marker 476.65 to mile post marker 483.0 near Augusta, this latter segment all in Butler County. *Kansas Eastern RR, Inc. – Abandonment Exemption – In Butler and Greenwood Counties, KS, Decision and Notice of Interim Trail Use*, STB Docket No. AB-563 (Sub-No. 1X) (STB served Oct. 25, 2001) (“2001 NITU”).

Although the tracks, ties, and some or all gravel were removed, ATA never developed the right of way for trail use nor took any steps to preserve the right of way for the operation of a trail. To the contrary, ATA permitted at least one landowner along the trail to fence the right of way, thereby cutting off access from the right of way to his property and to the enclosed segment of the right of way. (Declaration of D. Edmiston, Attachment 1, Ex. A.)¹

On September 14, 2001, ATA filed a notice with the Board of its intent to terminate the trail use with respect to certain portions of the KER right of way that had previously been railbanked. *2001 NITU*, slip. op. at 1. Thereupon, the Board reopened the matter and issued the *2001 NITU* and vacated an earlier, July 5, 2000, NITU with respect to those line segments subject to the ATA termination. *Id.* Those segments flank the portion already fully abandoned by KER (for highway construction between mile post markers 476.4 and 476.65) and are located at mile post markers 471.0, near Leon, to 476.4, abutting the eastern side of the highway, and mile post markers 476.65, abutting the western side of that highway, to 483.0, near Augusta.

¹ A copy of the Declaration is attached hereto in order to expedite this filing. The original of the Declaration will be filed promptly in a supplemental submission to the Board.

On December 18, 2001, Butler County filed a request with the Board for the issuance of a NITU on those two segments terminated by ATA, which flank the abandoned segment in Butler County. The Board found that it still retained jurisdiction over the matter and granted the County's request by issuing a NITU for those two short segments in Butler County. *Kansas Eastern RR, Inc. – Abandonment Exemption – In Butler and Greenwood Counties, KS, Decision and Notice of Interim Trail Use*, STB Docket No. AB-563 (Sub-No. 1X) (STB served Jan. 17, 2002) (“2002 NITU”).

By letter to the Board, received July 24, 2002, Butler County informed the Board that KER and the County had consummated a trail agreement for those two short Segments of right of way in Butler County. (July 16, 2002, letter from Doll to the Hon. Williams, rec'd July 24, 2002, Attachment 2 (for the Boards' convenience).)

While Butler County characterized the agreement as a “trail use/railbanking agreement,” the use of the right of way has actually been slated for different purposes. Butler County has publically announced to the adjacent landowners that it “own[s]” the two segments that were subject to the 2002 NITU. (Edmiston Declaration; Ex. B.) As the presumed owner, the County does not plan on putting the right of way to interim trail use, but rather intends to maintain the property for utility use and provide long-term leases to adjacent landowners for their own non-trail use. (*Id.*)

On July 13, 2004, ATA filed a Notice of Intent to Terminate Trail Use, wherein it requested the Board's authority to terminate trail use on two different segments of right of

way. ATA requested termination of trail use for the 23.5 mile segment of the former SKO right of way under Docket No. AB-471 (Sub-No. 4X) (between milepost 415.0 at Fredonia and milepost 438.5 near Severy, Kansas. And ATA requested termination of its remaining segment of the former KER right of way in Docket No. AB-563 (Sub-No. 1X), between milepost 471.0 near Leon and Milepost 438.5 near Severy, running west to east from Butler County to Greenwood County. (Both of these segments will be collectively referred to herein as “Greenwood and Butler Segments.”) ATA delivered a copy of its Notice to KER and SKO. The Railroads did not enter an appearance or file any pleading or correspondence in response to the ATA’s Notice. *See Kansas Eastern RR, Inc. – Abandonment Exemption – In Butler and Greenwood Counties, KS, Decision and Notice of Interim Trail Use*, STB Docket No. AB-563 (Sub-No. 1X); *South Kansas and Oklahoma RR, Inc. – Abandonment Exemption – Crawford, Wilson, Elk and Greenwood Counties, KS, and Osage and Tulsa Counties, OK*, STB Docket No. AB-471 (Sub-No. 4X) (STB served July 30, 2004) (authorizing SKO and KER to abandon certain segments of right of way and noting the procedural history on the two Butler County segments but omitting any reference to any trail use agreement reached between KER and the County) (“*July 30, 2004 Decision*”).

On July 30, 2004, the Board issued its decision authorizing ATA and the Railroads to abandon the right of way. In accordance with the Board’s procedural rules, a copy of the ATA’s Notice was delivered to KER and SKO. No person filed a request for

reconsideration of that decision within the prescribed time period nor was any request for trail use submitted during the prescribed period.

On September 7, 2004, weeks after the prescribed period for such requests had closed, Butler County submitted a request for trail use on the Greenwood and Butler Segments.

ARGUMENTS AND AUTHORITIES

Butler County should be denied its request for the authority to enter into a trail use agreement on the Greenwood and Butler Segments because, in fact, it has no intention of operating a trail on these segments. Rather, the County's explicitly stated intention is to exploit the right of way for utility uses and to lease the land back to the adjacent landowners under a "long-term lease program." (Edmiston Declaration; Ex. B.) As such, the County's request for trail use is a sham and runs afoul of the requirements under 16 U.S.C.A. § 1247(d) and 49 C.F.R. § 1152.29. Furthermore, Butler County's defective request for trail use is late-filed and for this reason alone should not be entertained by this Board.

I. BUTLER COUNTY'S TRAIL USE REQUEST IS A SHAM

As is well-known to the Board, The National Trails System Act, 16 U.S.C. § 1247(d), provides for the conversion of former railroad right of way into interim recreational trail use:

(d) Interim use of railroad rights-of-way. The Secretary of Transportation, the Chairman of the Surface Transportation

Board, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976, shall encourage State and local agencies and private interests *to establish appropriate trails* using the provisions of such programs. . . .

§1247(d) (emphasis added).

As such, the Trails Act serves the purpose of both providing for the public interest in maintaining “nature” trails as well as for “railbanking” the right of way in the event the need arises for future rail operations on the railroad line. *E.g., Preseault v. United States*, 100 F.3d 1525 (Fed. Cir. 1996). Under any application of this Act, however, the fundamental requirement is that a trail sponsor shall manage the right of way for *trail use*.

§ 1247(d).

The implementing regulation to § 1247(d), 49 C.F.R. § 1152.29, repeats this requirement including in the opening part of the provision:

§1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

(a) If any state, political subdivision, or qualified private organization is interested in acquiring or using a right of way of a rail line proposed to be abandoned *for interim trail use* and rail banking pursuant to 16 U.S.C. 1247(d), it must [meet certain conditions under the provision]. . . .

(Emphasis added.)

Consistent with the Trails Act and the regulations thereto, the Board, as well as its predecessor the Interstate Commerce Commission (“ICC”), has repeatedly indicated that if any other use is proposed than that of a trail, the Board will deny authority for trail use.

As was noted by the Board in *T and P Railway – Abandonment Exemption – In Shawnee, Jefferson and Atchison Counties, KS*, STB Docket No. AB-381 (Sub-No. 1X) (STB served February 20, 1997) (“*T and P*”), slip. op. at 4, the ICC itself, in 1995, assured the United States Court of Appeals for the District of Columbia Circuit, that the procedures under the Trails Act specifically provided for the submission of evidence by landowners when the legitimacy of a proposed trail was questioned:

Specifically, after a Trails Act request is made by a trail group, landowners can submit evidence that a trail offer is a subterfuge (i.e., *that the right-of-way will not in fact be used as a trail*)

(Emphasis added).

Embracing that very reasoning, the Board in *T and P* addressed circumstances under which a trail might be found to be a sham. The Board concluded that with the facts presented therein, there was no evidence of subterfuge since the trail manager was not “actively discouraging trail use.” *Id.* But as is apparent from the cases in which the Board has considered the issue, in those instances where the requested trail use in fact will *not* result in trail use, the Board must necessarily deny the relief requested by such sham trail managers. *Id.*; see also *Owensville Terminal Co., Inc. – Abandonment Exemption – In Edwards and White Counties, IL, and Gibson and Posey Counties, IN*, STB Docket No. AB-477 (Sub-No. 3X) (STB served Dec. 2, 1998), slip. op. at 7 (stating landowners can seek revocation of trail condition at any time if they can show the statutory conditions are not being met and quoting the above passage from *T and P*); *SF*

& L Ry, Inc. – Abandonment Exemption – In Ellis and Hill Counties, TX, Decision and Notice of Interim Trail Use or Abandonment In the Matter of a Request to Set Terms and Conditions, STB Docket No. AB-448 (Sub-No. 1X) (STB Served July 30, 1996), slip. op. at 8, n.12 (indicating that an interested party could at any time submit “hard evidence” to the STB in the event that a proposed trail was a sham if the right of way was not, in fact, being put to trail use) ; *cf, Redmond-Issaquah RR Preservation Assoc. v STB*, 223 F.3d 1057 (9th Cir. 2000) (affirming STB decision that an organization’s offer of financial assistance to acquire a railroad line for purported railroad use was a ruse to frustrate a trail sponsor’s intention of converting a railroad right of way into trail use).

That a sham trail is proposed here, is manifest. To be sure, Butler County has not informed the Board of its stated intentions. Nevertheless, the County has shared those intentions with the public in Butler County and with the neighboring Greenwood County. Butler County has engaged in public and private meetings with landowners where it has presented its plans for the right of way. As stated in its form letter notifying untold numbers of Butler County landowners of its intent, the County plans to acquire the right of way under the Trails Act, but then turn the right of way into a utility corridor, while leasing the surface back to each servient landowner for the annual cost of the property taxes. In short, the County intends to *prevent* the land from being subject to trail use. (Edmiston Declaration; Ex. B.)

Under these circumstances, and as has been indicated by the Board repeatedly

when discussing the issue, the County's bid for authority to manage a "trail" must be denied. The County has no intention of managing a trail as is evident from its very opposite intention of engaging in a "long-term" lease "program" of the land to the adjacent landowners. As such, its stated intention of operating as a land-lessor to the actual owners of the right of way is an affront to terms of the Trails Act. Likewise, its intended exploitation of the right of way for utility purposes is similarly unsupportable under the Act. That it offers this long-term leasing program with the ancillary and purported goal of "future rail use" is beside the point since the Trails Act does not offer the option of trail use "*or*" rail-banking.

Accordingly, the Board's *July 30, 2004, Decision* must remain in effect and the Board must deny the County's request for authority to reach a trail use agreement with KER and SKO on the segments authorized for abandonment.

II. BUTLER COUNTY'S LATE-FILED REQUEST IS PROCEDURALLY DEFECTIVE

The prescriptive period for the County's trail use request is forty-five days from the date of the abandonment or discontinuance application. 49 C.F.R. § 1152.25(c). The County's trail use request was not filed within this prescribed time frame. Although Butler County is aware of the Board's procedures (see *e.g.* STB docket AB-471), the County has late-filed for trail use in this case again, as it has in other cases.

In addition, 49 C.F.R. § 1152.29(b)(3) mandates that late-filed trail use requests contain a statement showing good cause for the late filing. The County's late-filed

request in this case does not contain the requisite statement showing good cause for the late filing. This is so because the County has no good cause – it knew or should have known about the KER and SKO filings at the time they were filed either through direct notice to the County or because the information was available as part of the public record and this County is a party in general to the activities on this line. Accordingly, the County's late-filed request is defective on its face and there is no good cause for its violation of the Board's rules.

For these reasons alone, the Board retains the discretion to reject the County's request for trail use, and in fact should reject the request.

IV. PETITION FOR LEAVE TO SERVE DISCOVERY UPON BUTLER COUNTY

Petitioner respectfully requests leave to serve upon Butler County certain requests for documents, interrogatories, and requests for admissions which are designed to shed further light on the facts behind Butler County's bid for trail use. The Board has jurisdiction over this request because it concerns the subject of the Butler County's request for trail use. Petitioner submits he is entitled to this relief as he is a party petitioning for intervention in order to call to the Board's attention the material violation behind Butler County's request for trail use under § 1247(d).

WHEREFORE, Petitioner requests leave to conduct the discovery upon Butler County that he is serving contemporaneously herewith upon Butler County and leave to file a supplemental Petition within forty-five (45) days from the date of this Petition.

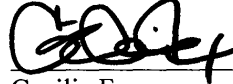
Petitioner submits that there may be additional, material facts that would implicate the above discussion, or that would have bearing on other issues of law concerning this proposed trail use that should be brought to the Board's attention in addition to those issues of fact and law presented above.

CONCLUSION

For the foregoing reasons, the Petitioner David L. Murfin respectfully requests that (1) he be allowed to intervene in this matter as his intervention will not unduly delay or broaden the issues before the Board, (2) the Board deny Butler County's trail use request for the subject SKO and KER Segments because, in fact, the right of way would not be put to trail use by the County, (3) the Board deny the County's request because it is procedurally defective, and (4) the Board grant Petitioner's request for leave to conduct discovery upon Butler County and to file a supplemental Petition relevant to the Board's determinations on the subject SKO and KER Segments within forty-five days of this filing.

Respectfully submitted this 22nd day of September, 2004,

By: ACKERSON KAUFFMAN FEX, PC



Cecilia Fex
ACKERSON KAUFFMAN FEX, PC
1666 K Street, NW, Suite 1010
Washington, DC 20006-1217
Office: (202) 833-8833
Fax: (202) 833-8831
fex@ackersonlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Petition to Intervene,
Petition For Denial of Trail Use Request, and Petition for Permission to Conduct Limited

Discovery Upon Butler County was mailed, postage prepaid, on this the 22nd day of

September, 2004 to:
Kansas Eastern Railroad, Inc.
c/o Ball Janik LLP
Attn: Karl Morell
1455 F Street, NW
Suite 225
Washington, D.C. 20005

American Trails Association, Inc.
c/o Fritz R. Kahn, PC
1920 N Street,
8th Floor
Washington, D.C. 20036-1601

Butler County Board of Commissioners
205 West Central
El Dorado, KS 67042
Attn: Will Carpenter and Randy Doll

Charles J. Woodin
Robert McCully
Foulston & Siefkin LLP
100 N. Broadway
Suite 700
Wichita, KS 67202-2295


Cecilia Fex

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

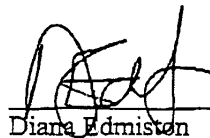
STB Docket No. AB-563 (Sub-No. 1X)

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

DECLARATION OF DIANA EDMISTON

I, Diana Edmiston, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am of lawful age, and am qualified and authorized to file this Declaration, executed on September 22, 2004.

1. I am an Attorney for David L. Murfin.
2. Exhibit A, attached hereto, is a true and correct copy of a letter provided to me by Charles J. Woodin, Attorney for Tom Devlin. Mr. Devlin owns real property in Butler County that is bisected by the railroad right of way at issue in this Docket, AB-563 (Sub 1X). This letter reflects that American Trails Association, Inc. permitted Mr. Devlin to erect barriers, i.e. fencing, across the railroad right of way, and to post "No Trespassing" signs, to prevent access to the railroad right of way that cuts through his property in Butler County.
3. Exhibit B, attached hereto, is a true and correct copy of a letter provided to me by Dave Egan, Attorney for Tom Devlin. Mr. Egan informed me that Tom Devlin received the letter from Butler County.


Diana Edmiston

American Trails Association

P.O. Box 26421
Salt Lake City, Utah 84126
(801) 972-8330 • (801) 972-2041 Fax

March 30, 2001

Charles J. Woodin
Foulston & Siefkin, L.L.P.
Bank of American Center
100 N. Broadway, Suite 700
Wichita, Kansas 67202-2295

Re: Butler County, Kansas
Letter dated March 21, 2001

Dear Chuck:

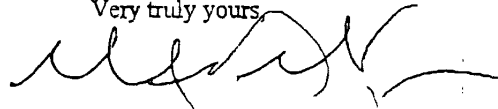
Thank you for your letter. In response, please note the following:

- ~ We are sending in an inspector to review the situation and make possible corrections.
- ~ Apparently, trespassers have removed the "No Trespassing" signs. We will endeavor to replace some of them.
- ~ As you know, it is difficult to prevent someone from trespassing on the right-of-way due to its length and easy access. We will try to limit access. If you or your client become aware of someone who is trespassing, we would appreciate your call to the local police department.
- ~ Your client is granted a revocable license to enter on the right-of-way for the sole purpose of erecting appropriate barriers and/or placing "No Trespassing" signs, on the following conditions:
 1. That your client will release and indemnify American Trails Association and any affiliate from any damages or other liability under the invitation or direction of your client on the right-of-way, regardless of negligence on the part of the American Trails Association.
 2. That your client will assume all costs associated with the placement of any signs or barriers.

Attachment 1; EX. A

2. Your client will remove any such barrier, if directed to do so by the American Trails Association. If you should have further questions, please advise.

Very truly yours,



Michael J. Van Wagenen
Vice President



Mile Post # 471

August 4, 2004

NOTICE TO: Augusta/Leon Rail Line
Adjacent Landowners

In 2002 Butler County became the owner of part of the Kansas Eastern Railroad, which had been purchased from Burlington Northern/Santa Fe (BNSF) rail line. This ownership extends from 6 tenths of a mile east of Augusta to approximately one mile east of Leon.

The property was obtained during an abandonment procedure by Kansas Eastern RR and was transferred to Butler County through a Public Law known as the National Trails System. This program is under the administrative control of the Surface Transportation Board.

The Law allows the County to own and maintain this property for future rail use. It is the County's intent to maintain this railway corridor for future utility purposes, and to allow the adjacent landowners the use of the property under a long-term lease program.

Butler County will hold a meeting on August 17, 2004 at 7 PM in the new Haverhill Christian Church located next to US-400.

Discussion will be held on the opportunity you have to lease this property and what the limits and responsibilities of such a lease will be. We expect a large number of landowners will be in attendance and ask for your patience during the discussion.

Thank you for your time and cooperation.

Cordially,

Larry J. Powell

Larry Powell, Director
Butler County Economic Development

121 S. Cordy • El Dorado, Kansas 67042

Attachment 1; Ex. B

Phone: 316-322-4242

Fax: 316-322-4245

E-Mail: bced@bucoks.com

P. 1

0081-469-916 316-634-1800

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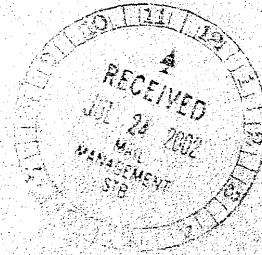
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BUTLER COUNTY
BOARD OF COMMISSIONERS



205925

July 16, 2002

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JUL 24 2002

Part of
Public Record

RE: STB DOCKET NO. AB-563 (Sub-No. IX), Kansas Eastern Railroad, Inc. --
Abandonment Exemption-- In Butler and Greenwood Counties, KS

Dear Secretary Williams:

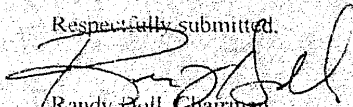
On January 15, 2002, the Surface Transportation Board approved Butler County's request for the issuance of a NITU to allow Kansas Eastern Railroad, Inc. (KER) to negotiate with Butler County for interim trail use/ rail banking for the right of way located between milepost 471.0 and milepost 476.4 and between milepost 476.65 and milepost 483.0 a distance of 11.75 miles for which the ATA had terminated trail use.

Butler County hereby notifies the Board that on July 11, 2002, KER and Butler County consummated a trail use/rail banking agreement for those same portions of the right-of-way as listed above.

If you have any questions or require additional information concerning this matter, please contact me.

By my signature below, I certify service upon KER c/o Karl Morell, Ball Jantz LLP, 1455 F St., N.W., suite 225 Washington, DC 20005, by U.S. Mail, postage prepaid, first class, this 16th day of July 2002.

Respectfully submitted,


Randy Dull, Chairman
Butler County Commissioner

Attachment 2

Randy Dull, 1st District
1157 Gierke, Andover, KS 67002

Bill Shriver, 2nd District
4 Taylor Dr., Augusta, Kansas

Will Carpenter, 3rd District
6965 SW 18th, El Dorado, Kansas

Butler County Courthouse, 205 West Central, El Dorado, Kansas 67042 • 316-322-4300

CERTIFICATE OF SERVICE

I hereby certify that "Petitioner Murfin's Discovery upon Butler County: Discovery of Interrogatories And Requests for Documents and Admissions" was mailed, postage prepaid, on this the 22nd day of September, 2004 to:

Kansas Eastern Railroad, Inc.
c/o Ball Janik LLP
Attn: Karl Morell
1455 F Street, NW
Suite 225
Washington, D.C. 20005

American Trails Association, Inc.
c/o Fritz R. Kahn, PC
1920 N Street,
8th Floor
Washington, D.C. 20036-1601

Butler County Board of Commissioners
205 West Central
El Dorado, KS 67042
Attn: Will Carpenter and Randy Doll

Charles J. Woodin
Robert McCully
Foulston & Siefkin LLP
100 N. Broadway
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Wichita, KS 67202-2295


Cecilia Fex