

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-870X

BUTLER COUNTY, KANSAS—ABANDONMENT EXEMPTION—IN BUTLER
COUNTY, KAN.

Decided: June 6, 2016

Butler County, Kansas (County), filed a notice of exemption under 49 C.F.R. part 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, Kan. Notice of the exemption was served and published in the Federal Register on July 2, 2004 (69 Fed. Reg. 40,472). The exemption became effective on August 4, 2004.¹

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/rail banking agreement with the County for the entire line pursuant to § 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 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.

By decision and NITU served on November 5, 2009, the Board modified and vacated, in part, the NITU served on June 2, 2005, and issued a replacement NITU substituting the City of Augusta, Kan., as the interim trail sponsor in place of BCED with respect to a 1.58-mile segment of the line between milepost 483.62 and milepost 485.2, subject to any environmental conditions that remained in effect.

By decision and NITU served on April 5, 2010, the Board modified and vacated, in part, the NITU served on June 2, 2005, and issued a replacement NITU substituting the City of Andover, Kan. (Andover) as the interim trail sponsor in place of BCED with respect to a three-

¹ By decision served on August 2, 2004, the proceeding was reopened and the exemption was made subject to a salvage-related environmental condition that remains in effect.

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 R.R. Holding Auth.—Aban. Exemption—in Garfield, Eagle & Pitkin Clys., Colo., AB-547X, slip op. at 4 n.11 (STB served Oct. 16, 1998).

mile segment of the line between milepost 491.22 at Andover, and milepost 494.22 near Andover, subject to any environmental conditions that remained in effect.

On April 20, 2016, BCED and Andover (jointly, Petitioners) filed a joint petition requesting that the Board reopen this proceeding, vacate, in part, the existing NITU, and issue a replacement NITU substituting Andover as the interim trail sponsor in place of BCED for a 2.87-mile segment of the line between milepost 491.22 at Andover and milepost 488.35 near Andover. The joint petition is supported by the County.

As required by 49 C.F.R. § 1152.29, Andover has submitted a statement indicating its willingness to assume full responsibility for: (i) management of the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way. Andover acknowledges that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Accordingly, Petitioners' request will be granted and a replacement NITU will be issued.

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 491.22 and milepost 488.35.
3. A replacement NITU applicable to Andover as interim trail sponsor is issued for the segment of the right-of-way between milepost 491.22 and milepost 488.35, effective on the service date of this decision and notice.
4. The new trail sponsor is required to assume, for the term of the agreement, full responsibility for (i) management of the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) 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 sponsor's continuing to meet the financial obligations for the right-of-way.
6. If the trail sponsor 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.