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SERVICE DATE – LATE RELEASE NOVEMBER 23, 2009

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-551 (Sub-No. 1X)

KNOX AND KANE RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
CLARION, FOREST, ELK AND McKEAN COUNTIES, PA

Decided: November 23, 2009

Knox and Kane Railroad Company (Knox and Kane) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its entire line of railroad between milepost 95.3 at North Clarion Junction, PA, and milepost 165.2 at Mt. Jewett, PA, a distance of 69.9 miles, in Clarion, Forest, Elk and McKean Counties, PA. Notice of the exemption was served and published in the Federal Register on October 23, 2009 (74 FR 54873-74). The exemption is scheduled to become effective on November 24, 2009.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 30, 2009. In the EA, SEA indicates that the National Geodetic Survey (NGS) has advised that approximately 61 geodetic station markers have been identified that may be affected by the proposed abandonment. SEA recommends that a condition be imposed requiring Knox and Kane to consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers.

SEA stated that the U.S. Army Corps of Engineers, Pittsburgh District (Corps) has assigned a file number to the proposed abandonment (File Number 2009-658), but has not provided any details about possible Corps concerns. SEA recommends that a condition be imposed requiring Knox and Kane to consult with the Corps prior to commencing salvage activities and address any Corps concerns involving the proposed abandonment.

According to SEA, the Pennsylvania Department of Transportation, Bureau of Rail Freight, Ports & Waterways (PA DOT) has stated that it does not have jurisdiction over the management and protection of environmental resources that may be affected by the proposed abandonment. According to SEA, PA DOT has requested that it be contacted for more information regarding any necessary permits if any work is to be performed within its rights-of-way in Clarion County, or if access to state roads such as driveways or construction entrances is needed in Clarion County. Accordingly, SEA recommends that a condition be imposed requiring Knox and Kane to contact PA DOT if work is to be performed within PA DOT rights-of-way in Clarion County.

SEA further states that the Pennsylvania Department of Environmental Protection (PA DEP) has recommended that Knox and Kane contact PA DEP prior to beginning any reclamation, demolition, or storage of materials along the corridor, as those activities may require PA DEP approval. Accordingly, SEA recommends that a condition be imposed requiring Knox and Kane to contact PA DEP Waste Management Program, Air Quality Program, and Watershed Management Program prior to commencing salvage activities regarding any necessary PA DEP approvals.

Finally, SEA states that Knox and Kane submitted a historic report as required by the Board's rules at 49 CFR 1105.8(a) and served a copy of the report on the Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation (State Historic Preservation Office or SHPO) pursuant to 49 CFR 1105.8(c). According to SEA, the SHPO has requested that Knox and Kane provide additional information before determining whether the rail line may be potentially eligible for listing in the National Register of Historic Places. SEA therefore recommends that a condition be imposed requiring Knox and Kane to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.¹

Comments to the EA were due by November 16, 2009. No comments were received. Accordingly, the conditions recommended by SEA in the EA will be imposed.

On November 12, 2009, McKean County Planning Commission, in conjunction with Clarion, Forest and Elk Counties (proponents), filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905,² in order to negotiate with Knox and Kane for acquisition of the right-of-way for use as a recreational trail. Proponents request that Knox and Kane be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that Knox and Kane be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. Proponents state that the corridor would make an excellent recreational trail connecting four counties throughout the Pennsylvania Wilds tourism promotion region, and that conversion of the property to trail use is consistent with local and county comprehensive and

¹ SEA indicates that it conducted a search of the Native American Consultation Database to identify Federally-recognized tribes which may have ancestral connections to the project area. The database indicated that the Seneca Nation of New York and the Tonawanda Band of Seneca Indians of New York may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the Area of Potential Effect) of the proposed abandonment. SEA further indicates that it sent a copy of the EA to these tribes for review and comment.

² The EA indicated that the right-of-way may be suitable for other public use following abandonment.

greenway plans. Proponents state that the 180-day period is needed to begin negotiations with Knox and Kane.

Proponents also submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case they 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, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reactivation for rail service. By response filed on November 19, 2009, Knox and Kane has indicated its willingness to negotiate with proponents for interim trail use.

Because proponents' request complies with the requirements of 49 CFR 1152.29 and Knox and Kane is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days from the effective date of the abandonment, Knox and Kane may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because proponents have satisfied these requirements, a 180-day public use condition will be imposed, commencing from the November 24, 2009 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, Knox and Kane must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, Knox and Kane is not required to deal exclusively with proponents, but may engage in negotiations with other interested persons.

As conditioned, this action 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 served and published in the Federal Register on October 23, 2009, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below, for a period of 180 days commencing from the November 24, 2009 effective date of the exemption (until May 23, 2010), and subject to the conditions that Knox and Kane: (1) consult with NGS and notify NGS at least 90 days prior to commencing salvage activities that could disturb or destroy the identified geodetic station markers in order to plan for the possible relocation of the markers; (2) consult with the Corps prior to commencing salvage activities and address any Corps concerns involving the proposed abandonment; (3) prior to commencing salvage activities, contact PA DOT if work is to be performed within PA DOT rights-of-way in Clarion County; (4) contact PA DEP Waste Management Program, Air Quality Program, and Watershed Management Program prior to commencing salvage activities regarding any necessary PA DEP approvals; and (5)(a) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, (b) report to SEA regarding any consultations with the SHPO and the public, and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed the condition.
3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, Knox and Kane may discontinue service and salvage track and related materials. Knox and Kane shall otherwise keep intact the right-of-way underlying the tracks, including bridges, trestles, culverts, and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
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 they 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 23, 2010, interim trail use may be implemented. If no agreement is reached by that time, Knox and Kane may fully abandon the line, subject to the environmental conditions imposed in this decision and notice. See 49 CFR 1152.29(d)(1).

8. This decision and notice is effective on its service date.

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