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SERVICE DATE – OCTOBER 22, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1032X

NEBRASKA, KANSAS & COLORADO RAILWAY, L.L.C.—ABANDONMENT
EXEMPTION—IN DECATUR, NORTON, AND PHILLIPS COUNTIES, KAN., AND
HARLAN COUNTY, NEB.

Decided: October 21, 2015

Nebraska, Kansas & Colorado Railway, L.L.C. (NKCR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 57.31 miles of rail line between (1) milepost 3.35 near Orleans, Neb., and milepost 29.84 at Almena, Kan.; (2) milepost 47.23 at Reager, Kan., and milepost 78.05 at Oberlin, Kan.; and (3) the Norton Spur in Norton, Kan. NKCR also will discontinue overhead trackage rights over a 17.7-mile line of railroad owned by Kyle Railroad between milepost 29.6 at Almena and milepost 47.3 at Oronoque Junction, Kan. Notice of the exemption was served and published in the Federal Register on August 7, 2015 (80 Fed. Reg. 47,557). The exemption became effective on September 8, 2015.

By decision served on September 4, 2015, the Board imposed four environmental conditions recommended by the Board's Office of Environmental Analysis (OEA). The environmental conditions require NKCR to: (1) prior to the commencement of any salvage activities, consult with the Kansas and Nebraska Departments of Environmental Quality regarding fugitive dust, construction storm water, water quality, and waste disposal; (2) prior to the onset of salvage activities, consult with the Nebraska Army Corps of Engineers regarding proposed abandonment activities; (3) in the event that any archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, immediately cease all work and notify OEA, interested federally recognized tribes, and the Kansas or Nebraska State Historic Preservation Office (SHPO). OEA would then consult with the SHPO, interested federally recognized tribes, and NKCR to determine whether any mitigation measures are necessary; and (4) prior to the commencement of any salvage activities, consult with the Kansas Department of Health & Environment, Bureau of Waste Management regarding the appropriate disposal of railroad ties and other waste materials.

In a Supplemental Final Environmental Assessment dated September 14, 2015, OEA states that, following issuance of the Board's September 4, 2015 decision, it received a comment from the National Geodetic Survey (NGS), in which the NGS states that the project area may contain 19 geodetic station markers that could be disturbed as a result of any abandonment salvage activities. OEA recommends that the following new condition be imposed: NKCR shall

consult with and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers.

Consistent with OEA's recommendations: (1) the four previously imposed environmental conditions regarding salvage activities will remain unchanged; and (2) the recommended additional condition requiring NKCR to consult with and notify NGS prior to beginning salvage activities will be imposed.

Interim trail use. On September 14, 2015, Sunflower Rails-to-Trails Conservancy, Inc. (Sunflower), late filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with NKCR for acquisition of the 57.31-mile line for use as a trail under § 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.¹ On September 2, 2015, pursuant to 49 C.F.R. § 1152.29, Sunflower submitted a statement of its willingness to assume financial responsibility for the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By a response filed on September 24, 2015, NKCR states that it has no objection to the issuance of the requested NITU.

Because Sunflower's request complies with the requirements of 49 C.F.R. § 1152.29 and NKCR is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, NKCR may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

This decision, and the proposed abandonment if implemented as conditioned, 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 August 7, 2015, 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 to permit Sunflower to

¹ The August 7, 2015 notice provided that requests for interim trail use/rail banking were to be filed by August 17, 2015. However, in Abandonment & Discontinuance of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that NKCR's late-filed request will prejudice any party, it will be accepted.

negotiate with NKCR for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until April 19, 2016. In addition to the four conditions regarding salvage activities imposed in the September 4, 2015 decision, NKCR's abandonment exemption is also subject to a condition that NKCR shall consult with and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers.

3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor 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.

4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 3 above.

5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, 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 April 19, 2016, for the right-of-way, interim trail use may be implemented. If no agreement is reached, NKCR may fully abandon the line.

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

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