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SERVICE DATE – DECEMBER 10, 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: December 8, 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 was scheduled to become effective on November 24, 2009.

By decision and notice of interim trail use or abandonment (NITU) served on November 23, 2009, the proceeding was reopened and a 180-day period (until May 23, 2010) was authorized for McKean County Planning Commission, in conjunction with Clarion, Forest and Elk Counties (collectively, the Counties), to negotiate an interim trail use/rail banking agreement with Knox and Kane for the right-of-way in this proceeding. That decision and notice also imposed a public use condition (which is scheduled to expire on May 23, 2010) and five environmental conditions recommended by the Board's Section of Environmental Analysis.

On November 23, 2009, The Kovalchick Family Trust (KFT), filed a request for the issuance of a NITU for the line under the National Trails System Act, 16 U.S.C. 1247(d), and for a public use condition under 49 U.S.C.10905,<sup>1</sup> in order to negotiate with Knox and Kane for acquisition of the right-of-way for use as a recreational trail. KFT 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 it 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. Knox and Kane has indicated its willingness to negotiate with KFT in addition to the Counties for interim trail use.

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<sup>1</sup> Although KFT seeks a public use condition, there is no need to consider the request because a public use condition was already imposed in the November 23, 2009 decision. 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.

Because KFT's request complies with the requirements of 49 CFR 1152.29 and Knox and Kane is willing to negotiate with KFT for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period. 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.

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 as set forth below to permit KFT to negotiate with Knox and Kane for trail use for a period of 180 days commencing from the November 24, 2009 effective date of the abandonment (until May 23, 2010), subject to the environmental conditions imposed in the November 23 decision and notice.
3. 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 it 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.
4. 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 of the right-of-way.
5. 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.
6. 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 the November 23 decision and notice.
7. This decision and notice is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.