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SERVICE DATE - SEPTEMBER 23, 1999

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: September 21, 1999

Kansas Eastern Railroad, Inc. (KER) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 44.5-mile line of railroad between milepost 438.5 at Severy, and milepost 483.0 near Augusta, in Butler and Greenwood Counties, KS. Notice of the exemption was served and published in the Federal Register on August 25, 1999 (64 FR 46471). The exemption is scheduled to become effective on September 24, 1999.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 30, 1999. In the EA, SEA states that the National Geodetic Survey (NGS) has identified 32 geodetic station markers that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that may disturb or destroy these markers to plan for their relocation. Therefore, SEA recommends that a condition be imposed requiring KER to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers. The recommended condition will be imposed.<sup>1</sup>

In a letter included in KER's environmental report, the U.S. Environmental Protection Agency (EPA) indicated that a section 402 permit for storm water discharges may be required during salvage operations if the construction activity disturbs five or more acres of land. Therefore, SEA recommends that a condition be imposed requiring KER to consult with the Kansas Department of Health and Environment in Topeka (KDHE), Don Carlson (785) 296-5547, to ensure compliance with state water quality standards.

Additionally, by facsimile received September 20, 1999, the Kansas State Historical Society (SHPO) has determined that the Beaumont St. Louis and San Francisco Railroad Water Tank is eligible for inclusion in the National Register of Historic Places. Therefore, SEA recommends that a condition be imposed requiring KER to retain its interest in and take no steps to alter the historic

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<sup>1</sup> The condition recommended in the EA served on August 30, 1999, inadvertently included the discontinuance proceeding in STB Docket No. AB-471 (Sub-No. 2X), South Kansas and Oklahoma Railroad, Inc.--Discontinuance Exemption--in Butler and Greenwood Counties, KS. The conditions being imposed in this decision apply only to the abandonment proceeding, STB Docket No. AB-563 (Sub-No. 1X).

integrity of the Beaumont St. Louis and San Francisco Railroad Water Tank until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

On September 3, 1999, the National ESA and Wetlands Coalition (NEWC) filed a letter stating that the federally endangered species, the Gray bat (*Myotis grisescens*), Piping plover (*Charadrius melodus*), Least tern (*Sterna antillarum*), and the Mead's milkweed (*Asclepias meadii*) are in the immediate vicinity of the proposed abandonment. NEWC also states that a survey of the Wichita quadrangle of the National Wetlands of the U.S. Fish and Wildlife Service (FWS) shows seven class one wetlands and five class two wetlands on the right-of-way. NEWC further states that the headwaters of Elk River near Beaumont, KS, contain numerous wetlands and wildlife habitat and that special emphasis on the area is advised. NEWC requests that, prior to salvage operations, KER consult with the Kansas Department of Natural Resources (KDNR), the FWS's Region 6 ESA office, and the U.S. Army Corps of Engineers (Corps) to determine whether permits are required.

In its ER, KER included letters dated May 3, 1999, informing all required Federal agencies that, on or about June 2, 1999, it would be filing a notice of exemption with the Board and requested comments from FWS, the National Park Service (NPS) and the Corps. As of the filing date of the notice, FWS, NPS, and the Corps had not responded to KER's letters concerning endangered or threatened species or areas of critical habitat, wetland or 100-year flood plains, wildlife sanctuaries or refuges, National or State parks or forestry. KER stated in its ER that it is confident that the proposed abandonment would not have an adverse effect on endangered or threatened species or areas designated as a critical habitat, that there are no wetlands or 100-year flood plains in the vicinity, and that it is unaware of any wildlife sanctuaries or refuges, National or State parks or forests that would be adversely affected by the proposed abandonment. An SEA staff member consulted with KER's representative and also tried several times to contact FWS, NPS, and the Corps concerning the issues raised by NEWC and was unable to get responses. SEA must rely on the appropriate Federal agencies' comments regarding wetlands and endangered species protection. Because FWS, NPS, and the Corps have not expressed concern, SEA does not recommend that any further conditions be imposed based on NEWC's comments. NEWC's request will therefore be denied.

The NGS, KDHE, and the section 106 conditions will be imposed. This decision 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 exemption of the abandonment of the line described above is subject to the conditions that KER: (1) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers; (2) consult with the KDHE in Topeka to determine if a permit is required under section 402; and (3) retain its interest in and take no steps

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to alter the historic integrity of the Beaumont St. Louis and San Francisco Railroad Water Tank until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary