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SERVICE DATE - DECEMBER 26, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-406 (Sub-No. 7X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY
-ABANDONMENT EXEMPTION-
IN BARTON, ELLSWORTH AND RICE COUNTIES, KS

Decided: December 19, 2001

On January 29, 1998, a decision and notice of interim trail use or abandonment (NITU) was served in this proceeding, authorizing a 180-day period for Iowa Trails Council (ITC) to negotiate an interim trail use/rail banking agreement with Central Kansas Railway, Limited Liability Company (CKR) for a 53.2-mile portion of CKR's Little River Subdivision from milepost 577.1 near Lyons to milepost 594.1 near Lorraine, then from milepost 20.7 near Lorraine to milepost 56.9 near Galatia, in Barton, Ellsworth and Rice Counties, KS.¹ In decisions served on July 6, 1998, December 23, 1998, June 25, 1999, January 11, 2000, and August 2, 2000, respectively, the negotiating period was extended to December 23, 1998, June 21, 1999, December 18, 1999, June 15, 2000, and December 12, 2000.

By letter filed on December 10, 2001, CKR: (1) requests an extension of the negotiating period for an additional 180 days in which to negotiate a trail use agreement regarding a segment of the line between milepost 577.1 near Lyons, KS, and milepost 594.1 near Lorraine, KS, and between milepost 20.7 near Lorraine, KS, and the east edge of Vine Street in Beaver, KS, at approximately milepost 41.1, a total distance of 37.4 miles, in Rice, Ellsworth and Barton Counties (37.4 mile segment); and (2) provides notice of consummation of abandonment pursuant to 49 CFR 115.29(e)(2) as to the remaining segment of the rail line between the east edge of Vine Street in Beaver, KS, at approximately milepost 41.1 and milepost 56.9 near Galatia, KS, a distance of 15.8 miles, in Barton County, KS.

¹ By decision served July 1, 1997, the Board issued a NITU, which authorized a 180-day period for James D. Jennings of Jennings & Co. (Jennings) to negotiate an interim trail use/rail banking agreement with CKR for the right-of-way. On December 24, 1997, ITC requested a NITU to permit it to negotiate with CKR. The negotiating period for Jennings expired on December 28, 1997, and, on January 26, 1998, Jennings submitted a fax transmittal indicating that he was no longer interested in negotiating for interim trail use/rail banking in this proceeding.

An extension of the trail use negotiating period may be granted as long as the Board retains jurisdiction over the involved railroad right-of-way² and the carrier is willing to continue negotiations. Even if the negotiating period has expired, when a carrier consents to continue negotiations and has not consummated the abandonment of the line at the end of the previously imposed period, as is the case here, the Board continues to have jurisdiction to grant an extension. As indicated by its letter, CKR has not consummated the abandonment with regard to the 37.4-mile segment and has indicated a willingness to continue to negotiate. Thus, the extension request can be granted.

The requested extension of the negotiating period for the 37.4-mile segment will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the extension will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the interim trail use negotiating period as to the 37.4-mile segment is granted.
2. The negotiating period under the NITU is extended for a period of 180 days from the service date of this decision (until June 24, 2002).
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

² Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction to extend the NITU negotiating period. See Rail Abandonments – Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company–Abandonment in Okmulgee, Okfuskee, Hughes, Pontotoc, Coal, Johnson, Atoka, and Bryan Counties, OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company–Abandonment–In Smith and Cherokee Counties, TX, Docket No. AB-39 (Sub-No. 12) (ICC served Mar. 27, 1992).