

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 406 (Sub-No. 5X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY—ABANDONMENT
EXEMPTION—IN CLARK AND COMANCHE COUNTIES, KAN.

Decided: June 10, 2013

Central Kansas Railway, Limited Liability Company (CKR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 30.3-mile rail line known as the Englewood Subdivision, extending between milepost 136, at or near Protection, and milepost 166 plus 1,846 feet, at or near Englewood, in Clark and Comanche Counties, Kan. Notice of the exemption was served and published in the Federal Register on March 11, 1996 (61 Fed. Reg. 9743).¹ By decision and Notice of Interim Trail Use or Abandonment (NITU) served on May 8, 1996, the proceeding was reopened and a 180-day period was authorized for James D. Jennings, dba Jennings & Co., to negotiate an interim trail use/rail banking agreement with CKR for the line pursuant to the National Trails System Act, 16 U.S.C. § 1247(d). By decisions served on October 31, 1996, and April 14, 1997, the NITU negotiating period was extended until July 2, 1997.

On July 11, 1997, a NITU was served authorizing a 90-day period for Iowa Trails Council (ITC), a new trail sponsor, to negotiate an interim trail use/rail banking agreement with CKR for the right-of-way. By letter filed on July 13, 1998, S. C. Gordon, General Manager-Real Estate, OmniTrax, Inc., advised the Board that an interim trail use/rail banking agreement was reached pursuant to the National Trails System Act, and conveyance was made to ITC, effective October 1, 1997.

By joint motion filed on January 24, 2000, ITC and Short Grass Prairie Trail, Inc. (SGPT) requested substitution of SGPT as the new interim trail user and the termination of ITC as the interim trail user for the right-of-way effective January 1, 2000, pursuant to 49 C.F.R. § 1152.29(f)(1). In a decision served on February 10, 2000, the Board reopened the proceeding, vacated the NITU served on July 11, 1997, and issued a replacement NITU applicable to SGPT as interim trail user, subject to the environmental condition imposed in the April 4, 1996

¹ In a decision served on April 4, 1996, the proceeding was reopened at the request of the Board's Section of Environmental Analysis (now the Office of Environmental Analysis), and the exemption was made subject to the condition that prior to commencing salvage operations, CKR shall consult with Kansas Department of Health and Environment regarding certain certification requirements.

decision.

By joint petition filed April 30, 2013, Sunflower Rail-Trails Conservancy, Inc. (SRTC) and SGPT request that the Board reopen the proceeding, vacate the existing NITU, and issue a replacement NITU substituting SRTC as the new interim trail sponsor in place of SGPT. The petition includes a copy of the extant NITU and a statement of SRTC's willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29. SRTC acknowledges 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. The parties indicate that responsibility for the right-of-way is to transfer to SRTC on July 1, 2013.

SRTC's submission meets the requirements of 49 C.F.R. § 1152.29(f). Accordingly, the request will be granted and a replacement NITU will be issued.

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. The NITU served on February 10, 2000, is vacated, and a replacement NITU applicable to SRTC as interim trail sponsor is issued, effective on July 1, 2013.
3. The new trail user is required to assume, for the term of the agreement, full responsibility for (1) managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (3) 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 new user's continuing to meet the financial obligations for the right-of-way.
5. If the new trail 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. This decision and notice is effective on its service date.

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