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SERVICE DATE - JUNE 23, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-406 (Sub-No. 6X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY
COMPANY--ABANDONMENT EXEMPTION--IN MARION
AND MCPHERSON COUNTIES, KS

Decided: June 20, 2000

In Jost v. STB, 194 F.3d 79 (D.C. Cir. 1999) (Jost), the court affirmed in part and remanded in part our decision served December 18, 1998 (1998 Decision), declining to reopen this Trails Act case.¹ Specifically, the court affirmed our determination not to scrutinize the financial fitness of the trail sponsor, but remanded for further explanation our determination not to reopen the proceeding to consider the impact of alleged right-of-way sales. In a decision served December 8, 1999 (1999 Decision), we reexamined the land sale issues; our 1999 Decision adhered to the 1998 Decision on those issues and provided the further explanation sought by the court.

On December 29, 1999, adjoining landowners and the Citizens Association of Marion and McPherson Counties (hereafter petitioners) filed a petition to reopen the 1999 Decision. Petitioners allege that the 1999 Decision “fails to meet the mandate and directives of” Jost on the land sale issues.² In addition, petitioners contend that the trail condition permitting interim trail use/rail banking on this right-of-way should be involuntarily revoked because the trail sponsor,

¹ The background of this case is set out in detail in our prior decisions. The “Trails Act” refers to the National Trails System Act, 16 U.S.C. 1247(d).

² The Central Kansas Railway (CKR) opposes the petition to reopen. On March 28, 2000, petitioners supplemented their petition with additional landowner affidavits and other material to support their claim that there have been full width right-of-way sales that would preclude the restoration of rail service on portions of this line. CKR objects that this material is cumulative of evidence already submitted by petitioners. Furthermore, CKR asks that the supplement be rejected or stricken because the interpretation of deeds and the determination of who owns good title are issues of State law that are outside the expertise of the Board. CKR agrees with our conclusion (see December 1999 Decision at 7) that the most appropriate course of action where, as here, the evidence on title issues is contradicted is for petitioners to go to State court to get the underlying State property law issues resolved.

Central Kansas Conservancy Inc. (Conservancy), is not meeting its statutory responsibilities for taxes, legal liability and trail management.³

The Conservancy has responded to the request for revocation of the trail condition, in a pleading filed February 7, 2000 (the February 2000 Pleading). The Conservancy states that it “recognizes its legal obligation to pay property taxes” pursuant to Kansas law on this property, that it is in the process of applying for a tax exemption, and that, should its request for a tax exemption be denied, “it will proceed to assist in the determination of the proper amount of taxes owed on the property actually owned.”

On March 3, 2000, petitioners supplemented their petition for reconsideration with letters from the Marion County and McPherson County tax appraisers dated February 11, 2000, stating that, as of that date, the Conservancy had not filed an application for a tax exemption with either county. Based on these letters, petitioners contend that the Conservancy’s February 2000 Pleading contains false and misleading information and should be stricken.

DISCUSSION

If it is shown that a trail sponsor has failed or likely will fail to pay taxes, meet past or potential liability claims, or adequately manage the trail, we will revoke the trail condition. See, e.g., T & P Ry. — Abandonment — In Shawnee, Jefferson, & Atchison Counties, Kan, STB Docket No. AB-381 (Sub-No. 1X) (STB served Feb. 20, 1997), at 9; Idaho N. & Pac. R.R. — Abandonment & Discontinuance Exemption — In Washington & Adams Counties, ID, STB Docket No. AB-433 (Sub-No. 2X) (STB served Apr. 1, 1998), at 8 (Idaho Northern). Therefore, we will not address the parties’ further arguments regarding the land sale issues until we have addressed the new evidence regarding the financial responsibility of the trail sponsor here. Financial responsibility is a threshold issue because, under the Trails Act, a trail sponsor must assume managerial, tax and legal responsibility for a right-of-way for as long as the property is used as a trail. 16 U.S.C. 1247(d); Idaho Northern. In short, if the Conservancy is failing to meet its financial obligations, the trail condition must be revoked, thereby mooting the land sale issue.

Here, the evidence that the Conservancy is delinquent in its tax obligations raises sufficient questions to warrant investigating the financial responsibility matter further. However, given the Conservancy’s stated intention to seek a tax exemption and its suggestion that, if that request is denied, it will pay the taxes that are owed, the fact that no request for a tax exemption

³ Under the Trails Act, a qualified trail sponsor must “assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such right-of-way. . . .” 16 U.S.C. 1247(d).

had been filed by February 11, 2000 is not enough to show that the Conservancy will not meet its financial responsibilities as a trail sponsor under Kansas law.

Accordingly, we will require the Conservancy and/or CKR to show cause that the trail sponsor is meeting its responsibilities under Kansas Law for taxes, legal liability, and trail management and that this trail condition should not be involuntarily revoked. The Conservancy and/or CKR have 30 days from the date of service of this decision to respond to this show cause order and to serve a copy of the response(s) on petitioners. Petitioners may respond to the Conservancy/CKR filing(s) within 20 days of receipt of the Conservancy/CKR filing(s).

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

It is ordered:

1. The motions to strike or reject are denied.
2. Within 30 days of the effective date of this decision, Conservancy and/or CKR are directed to show cause that the trail sponsor is meeting its responsibilities under Kansas law for taxes, legal liability, and trail management and that the trail condition should not be revoked. Conservancy and/or CKR must serve a copy of the response(s) to the Board on petitioners. Petitioners may respond within 20 days of receipt of the response(s).
3. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary