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SERVICE DATE – JANUARY 29, 2010

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-876X

R.J. CORMAN EQUIPMENT COMPANY, LLC—ABANDONMENT EXEMPTION—IN  
JOHNSON, MAGOFFIN AND BREATHITT COUNTIES, KY

Decided: January 28, 2010

By decision and notice of interim trail use or abandonment (NITU) served on December 23, 2004, the Board granted R.J. Corman Equipment Company, LLC (RJCE) and R.J. Corman Railroad Company/Bardstown Line (RJCR) (collectively, Corman), an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903. RJCE sought to abandon, and RJCR sought to discontinue service over, a line of railroad known as the Dawkins Line, extending from milepost 0.05 at Dawkins, KY, to the end of the track at milepost 36.13 near Evanston, KY, a distance of approximately 36.08 miles in Johnson, Magoffin and Breathitt Counties, KY.<sup>1</sup>

The exemption was granted subject to public use, environmental, and standard employee protective conditions, and the Board authorized a 180-day period for Judge Executive Roger “Tucker” Daniel and the Johnson County Fiscal Court, Judge Executive Bill May and the Magoffin County Fiscal Court, and Judge Executive Lewis Warrix and the Breathitt County Fiscal Court, to negotiate an interim trail use/rail banking agreement with RJCE under the National Trails System Act, 16 U.S.C. 1247(d). The negotiating period under the NITU was extended several times with the latest extension expiring on December 31, 2007.

By pleading filed on December 31, 2007, the Kentucky Rails to Trails Council (KRTC) stated that, on December 17, 2007, Big Sandy Area Development District requested that KRTC replace it as the new interim trail use proponent. By decision and notice served on January 23, 2008, the Board vacated the NITU served on December 23, 2004, and granted the request to substitute KRTC as interim trail user for a period of 180 days. The negotiating period under the NITU was extended by decisions served September 15, 2008, March 16, 2009, and July 29, 2009, with the latest extension expiring on January 12, 2010.

On January 12, 2010, the Commonwealth of Kentucky, Tourism, Arts, and Heritage Cabinet (KTAHC)<sup>2</sup> filed a pleading requesting the Board to substitute it for KRTC as the interim

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<sup>1</sup> Earlier decisions in this proceeding have embraced the discontinuance docket, STB Docket No. AB-875X, R.J. Corman Railroad Company/Bardstown Line—Discontinuance of Service Exemption—in Johnson, Magoffin and Breathitt Counties, KY.

trail proponent. KTAHC also requests that the Board authorize a new negotiation period for 180 days. KTAHC adds that Corman has authorized it to state that Corman consents to an extension of the NITU negotiating period and the consequent deadline for its filing a notice of consummation.

KTAHC has submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29. KTAHC also acknowledges that use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. Accordingly, the request will be granted and the authorization of a new 180-day negotiating period will have the effect of extending the deadline for filing a notice of consummation until September 26, 2010 (60 days after the scheduled expiration of the NITU negotiating period).

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 January 23, 2008, is vacated.
3. A replacement NITU applicable to KTAHC as interim trail user is issued for a period of 180 days from the service date of this decision and notice July 28, 2010.
4. The new trail user is required 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.
5. 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.
6. 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.
7. This decision and notice is effective on its service date.

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

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<sup>2</sup> KTAHC is a state governmental entity whose ancillary departments are responsible for the promotion and development of trails in the State of Kentucky.