

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: June 25, 1997

By decision served and notice published in the *Federal Register* on April 29, 1997 (62 FR 23291), the Board granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 permitting the abandonment by Central Kansas Railway, Limited Liability Company (CKR) of a 53.2-mile portion of its Little River Subdivision from milepost 577.1 near Lyons to milepost 594.1 near Lorraine, thence from milepost 20.7 near Lorraine to milepost 56.9 near Galatia, in Barton, Ellsworth and Rice Counties, KS. The exemption became effective on May 29, 1997.

On May 19, 1997, James D. Jennings of Jennings & Co. (Jennings) filed a request for issuance of a notice of interim trail use/rail banking to enable it to negotiate with CKR for use of the line as a trail. Jennings submitted a statement indicating its willingness to assume full responsibility for management of, and liability and payment of taxes for, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to restoration for rail purposes. By letter filed June 24, 1997, CKR indicates that the abandonment has not been consummated and that it is willing to negotiate with Jennings for interim trail use and rail banking of the line.

Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way¹ and the carrier is willing to enter into negotiations. In view of CKR's willingness to negotiate for trail use, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate a trail use agreement during the 180-day period following service of this decision. If the parties reach a mutually acceptable final agreement, further Board approval will not be necessary. If no agreement is reached within the 180 days, CKR may fully abandon the line. *See* 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for rail purposes.

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. Upon reconsideration, the decision served and published in the *Federal Register* on April 29, 1997, exempting the abandonment by CKR of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the service date of this decision and notice (i.e., until December 28, 1997).
3. If an interim trail use/rail banking agreement is reached, it must require the trail user 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

¹ *See Rail Abandonments--Supplemental Trails Act Procedures*, 4 I.C.C.2d 152, 157-58 (1987); *Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI*, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and *Missouri-Kansas-Texas Railroad Company--Abandonment--in Pettis and Henry Counties, MO*, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

only indemnify the railroad against any potential liability), and for the payment of any and all taxes imposed on the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user continuing to meet the financial obligations for the rights-of-way.

5. If the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that trail use be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after the service date of this decision, interim trail use may be implemented. If no agreement is reached by the 180th day, CKR may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary