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SERVICE DATE - FEBRUARY 10, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE INTERIM TRAIL USE OR ABANDONMENT

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

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--ABANDONMENT
EXEMPTION--IN CLARK AND COMANCHE COUNTIES, KS

Decided: February 4, 2000

Central Kansas Railway, Limited Liability Company (CKR) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a 30.3-mile portion of its line of railroad known as the Englewood Subdivision from milepost 136, at or near Protection, to milepost 166 plus 1846 feet, at or near Englewood, in Clark and Comanche Counties, KS. A notice of exemption was served and published in the Federal Register on March 11, 1996 (61 FR 9743).¹ On May 8, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for James D. Jennings, dba Jennings & Co (Jennings), to negotiate an interim trail use/rail banking agreement with CKR for the right-of-way involved in this proceeding. At the request of Jennings, the negotiation period under the NITU was extended by decisions served October 31, 1996, and April 14, 1997.² On July 11, 1997, a NITU was served, which authorized a 90-day period for Iowa Trails Council (ITC), a new negotiation party to negotiate an interim trail use/rail banking agreement with CKR for the 30.3-mile portion of the right-of-way.³

In a joint motion filed on January 24, 2000, ITC and Short Grass Prairie Trail, Inc. (SGPT) request 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 CFR 1152.29(f)(1).

SGPT submitted a statement of willingness to assume financial responsibility for interim rail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that the use of the right-of-way as a trail is subject to possible future reconstruction and reactivation of the right-of-way

¹ By decision served April 4, 1996, the proceeding was reopened at the request of the Board's Section 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 Environmental regarding certification requirements.

² The last extension expired on July 2, 1997.

³ By letter filed 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, 16 U.S.C. 1247(d), and conveyance was made to ITC, effective October 1, 1997.

for rail service. ITC and SGPT have also indicated that responsibility for the right-of-way was transferred to SGPT as of January 1, 2000. The parties' submission meets the requirements of 49 CFR 1152.29(f). Accordingly, the requested relief will be granted.

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

It is ordered:

1. This proceeding is reopened.
2. The NITU served on July 11, 1997, is vacated.
3. A replacement NITU applicable to the SGPT as interim trail user is issued, effective January 1, 2000, subject to the environmental conditions imposed in the April 4, 1996 decision.
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 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 is effective on its service date.

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

Vernon A. Williams
Secretary