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SERVICE DATE - JANUARY 17, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-563 (Sub-No. 1X)

KANSAS EASTERN RAILROAD, INC.—ABANDONMENT
EXEMPTION—IN BUTLER AND GREENWOOD COUNTIES, KS

Decided: January 15, 2002

Kansas Eastern Railroad, Inc. (KER) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 44.5-mile line of railroad between milepost 438.5 at Severy, and milepost 483.0 near Augusta, in Butler and Greenwood Counties, KS. Notice of the exemption was served and published in the Federal Register on August 25, 1999 (64 FR 46471).¹ On December 10, 1999, a decision and notice of interim trail use or abandonment (NITU) was served that reopened the proceeding to implement interim trail use/rail banking under 49 CFR 1152.29 and the National Trails System Act, 16 U.S.C. 1247(d), and provided a 180-day period for KER to negotiate an agreement with Butler County (County) for portions of the right-of-way between milepost 438.5 and milepost 476.4, and between milepost 476.65 and milepost 483.0.² Subsequently, by decision served July 5, 2000, the exemption was modified to the extent necessary to allow American Trails Association, Inc. (ATA) and KER to negotiate an agreement for trail use for portions of the right-of-way that the County had proposed to rail bank. By letter filed on July 7, 2000, KER and ATA notified the Board that they had reached an agreement for interim trail use. On September 14, 2001, ATA filed a notice of intent to terminate trail use for the portions of the right-of-way between milepost 471.0 near Leon and milepost 476.4 and between milepost 476.65 and milepost 483.0 near Augusta, a distance of 11.75 miles in Butler County, KS. By decision served October 25, 2001, the proceeding was reopened and the NITU served on July 5, 2000, was vacated with respect to those line segments.

On December 18, 2001, the County filed a request for the issuance of a NITU for those same portions of the right-of-way between milepost 471.0 and milepost 476.4 and between milepost 476.65 and milepost 483.0 for which ATA had terminated trail use. The County submitted a statement of willingness to assume financial responsibility for the management of,

¹ By decision served September 23, 1999, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to several environmental conditions.

² By letter filed May 2, 2000, KER notified the Board that it consummated the abandonment of the right-of-way between milepost 476.4 and milepost 476.65 and that it entered an agreement with the State of Kansas for the sale of that line segment which was needed by the State for the reconstruction of a highway.

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, as required at 49 CFR 1152.29, and has 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 for rail service. On December 18, 2001, KER advised the Board that it has not consummated the abandonment of those line segments, and that it is willing to negotiate with the County for interim trail use.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way³ and the carrier is willing to enter into negotiations. Inasmuch as KER has not consummated the abandonment and is willing to negotiate with the County for the right-of-way, a NITU will be issued with the trail use negotiation period running for 180 days from the service date of this decision or until July 16, 2002. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, KER may fully abandon the line, provided that the environmental conditions imposed in the September 23, 1999 decision are met. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This decision 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 notice of exemption served and published in the Federal Register on August 25, 1999, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for portions of the line extending between milepost 471.0 and milepost 476.4, and between milepost 476.65 and milepost 483.0 until July 16, 2002, subject to the environmental conditions imposed in the September 23, 1999 decision.
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

³ 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).

case it need only indemnify the railroad against any potential liability), and for 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 user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the 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. If an agreement for interim trail use/rail banking is reached by July 16, 2002, interim trail use may be implemented. If no agreement is reached by that time, KER 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