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SERVICE DATE - JULY 5, 2000

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: June 30, 2000

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 for the entire line 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 for portions of the right-of-way between milepost 438.5 and milepost 476.4, and between milepost 476.65 and milepost 483.0 in this proceeding. The negotiation period under the NITU expired on March 22, 2000.²

By petition filed June 23, 2000, American Trails Association, Inc. (ATA), a new negotiation party, filed a request for a NITU for portions of the right-of-way between milepost 438.5 at Severy and milepost 476.4 and between milepost 476.65 and milepost 483.0 near Augusta in Butler and Greenwood Counties, KS. ATA submitted a statement of willingness to assume financial responsibility for interim trial use and rail banking in compliance with 49 CFR

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 the conditions that KER: (1) consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers; (2) consult with the Kansas Department of Health and Environment in Topeka to determine if a permit is required under section 402; and (3) retain its interest in and take no steps to alter the historic integrity of the Beaumont St. Louis and San Francisco Railroad Water Tank until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

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 is needed by the State for the reconstruction of a highway.

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 for rail service. On June 27, 2000, KER advised the Board that it is willing to negotiate with ATA for interim trail use and that it has not consummated the abandonment of the NITU lines.

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 ATA 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 January 1, 2001. If no agreement is reached within that time period, KER may fully abandon the line. 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 438.5 and milepost 476.4, and between milepost 476.65 and milepost 483.0 until January 1, 2001, 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 (if the user is immune from liability, in which 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.

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).

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 January 1, 2001, 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, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary