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SERVICE DATE - JANUARY 18, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-406 (Sub-No. 13X)

CENTRAL KANSAS RAILWAY, L.L.C.--ABANDONMENT EXEMPTION--  
IN RENO, KINGMAN, HARPER, RICE, AND MCPHERSON COUNTIES, KS

Decided: January 11, 2001

Central Kansas Railway, L.L.C. (CKR) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon: (1) its H&S Branch between: (a) milepost 3.6 at Hutchinson and milepost 31.1 at Kingman; and (b) milepost 48.2 at Rago and milepost 59.7 at Harper; and (2) its McPherson Branch between milepost 58.0 at Conway and milepost 77.4 at Lyons, a distance of approximately 58.4 miles in Reno, Kingman, Harper, McPherson, and Rice Counties, KS. Notice of the exemption was served and published in the Federal Register on December 20, 2000 (65 FR 79917-18). The exemption is scheduled to become effective on January 19, 2001.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on December 22, 2000. In the EA, SEA indicated that the U.S. Environmental Protection Agency (EPA), Region 7, and the Kansas State Historical Society (SHPO) have not completed their evaluation of the potential impact of this project on environmental and historical resources, respectively. SEA also indicates that the Kansas Counties of Harper and Reno have not completed their review of the proposed abandonment. Therefore, SEA recommends that CKR: (1) consult with EPA Region 7 and secure all necessary permits prior to initiation of salvage or disposal activities; (2) consult with the SHPO prior to salvage of the rail line to determine if the proposed abandonment is consistent with the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA); and (3) consult with the Counties of Harper and Reno prior to initiation of any salvage activities in order to address any concerns that the Counties may have.

SEA states that the National Geodetic Survey (NGS) states that there are 95 geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring CKR to consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

SEA also states that the Kansas Department of Transportation (KS-DOT) requests that CKR prepare a track salvage work plan. Therefore, SEA recommends that CKR, prior to initiation of salvage activities, consult with the KS-DOT regarding the preparation of a track salvage work plan.

SEA further states that the Counties of McPherson and Rice have expressed concern regarding the impact of salvage activities, specifically the proper disposal of railroad ties. Therefore, SEA recommends that CKR consult with the Counties of McPherson and Rice prior to initiation of any salvage activities regarding the disposal of all railroad ties.

SEA finally states that the Kansas Department of Health and Environment - Bureau of Water (KDHE - BW) states that issues impacting water quality are subject to their review. Therefore, SEA recommends that CKR consult with the KDHE - BW and prepare a Non-point Source Pollution Control Plan prior to abandonment and secure all necessary permits prior to initiation of salvage or disposal activities.

SEA also indicates that the right-of-way may be suitable for other public use following abandonment. By petition filed January 8, 2001, KS-DOT filed a request for a 180-day public use condition under 49 U.S.C. 10905 for a portion of the right-of-way between milepost 48.11 and milepost 48.99, in or near Rago, in Kingman County, KS. KS-DOT states that it plans to use that portion of the right-of-way to realign highway K-14 and rebuild the bridge across the Chikaskia River. KS-DOT states that it needs the full 180-day period to negotiate with CKR.

KS-DOT meets the requirements for a public use condition prescribed at 49 CFR 1152.28(a)(2) by specifying: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. Accordingly, the requested 180-day public use condition will be imposed. A public use condition is not imposed for the benefit any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found appropriate for public purposes.<sup>1</sup>

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 exemption of the abandonment of the rail line described above is subject to the conditions that CKR: (a) consult with EPA Region 7 and secure all necessary permits prior to initiation of salvage or disposal activities; (b) consult with the SHPO prior to salvage of the rail line to determine if the proposed abandonment is consistent with the section 106 process of the NHPA; (c) consult with the Kansas Counties of McPherson and Rice

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<sup>1</sup> Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

prior to initiation of any salvage activities regarding the disposal of all railroad ties; (d) consult with the Counties of Harper and Reno prior to initiation of any salvage activities to address any concerns that the Counties may have; (e) consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers; and (f) consult with the KS-DOT regarding the preparation of a track salvage work plan.

3. The request for a public use condition is granted. The exemption of the abandonment of the right-of-way between milepost 48.11 and milepost 48.99, in or near Rago, in Kingman County, KS, is subject to the condition that CKR leave intact all of the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels (but not track, ties and signal equipment), for a period of 180 days from the January 19, 2001 effective date of the abandonment exemption (i.e., until July 18, 2001), to enable any State or local government agency or other interested person to negotiate the acquisition of the line for public use.

4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary