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SERVICE DATE - MARCH 28, 1997

SURFACE TRANSPORTATION BOARD¹

DECISION

Docket No. AB-33 (Sub-No. 89X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN MCPHERSON COUNTY, KS (McPherson Branch)

Decided: March 25, 1997

By decision and notice of interim trail use or abandonment (NITU) served on September 28, 1995, a 180-day trail use/rail banking condition was imposed under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), as requested by the city of Lindsborg, KS (Lindsborg), in connection with the proposed abandonment by Union Pacific Railroad Company (UP) of 12.6 miles of rail line, between milepost 518.0 near McPherson and milepost 530.6 near Lindsborg, in McPherson County, KS.² At Lindsborg's request, the trail use condition was extended to September 22, 1996, in a decision served March 26, 1996, and at the request of Kansas Horse Council (Kansas Horse), Friends of the Trail (Friends), and Rails to Trails Conservancy (RTC) (collectively, petitioners), the trail use condition was further extended to March 21, 1997, in a decision served January 31, 1997.³

On March 11, 1997, Central Kansas Conservancy, Inc. (CKC), formerly Friends, filed a letter stating that it changed its name to, and incorporated itself as, CKC, a non-profit corporation. Accompanying the letter was a statement from CKC agreeing to assume financial responsibility for interim trail use/rail banking in compliance with 49 CFR 1152.29 and acknowledging that use of the right-of-way as a trail is subject to future

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

² The notice of exemption, under 49 CFR 1152 Subpart F--Exempt Abandonments, was served and published in the Federal Register on June 22, 1995 (60 FR 32710) and was to become effective on July 23, 1995.

³ Petitioners requested the trail use extension because Lindsborg was no longer involved, and a statement of willingness to assume financial responsibility was subsequently filed by Serenata Farms School of Equestrian Arts, an affiliate of Kansas Horse.

reactivation for rail service.⁴ In a separate motion, also filed on March 11, 1997, CKC requests that the NITU negotiating period be extended by 30 days to April 20, 1997. CKC indicates that all material issues relating to trail use/rail banking have been resolved and states that it expects to enter into a contract with UP as soon as the respective boards of directors give their final approval. According to CKC, the requested extension is necessary because scheduling difficulties could delay the approval of the agreement beyond March 21, 1997, the expiration date of the NITU negotiating period. CKC states that the extension is supported by Kansas Horse and RTC. Additionally, it attached a letter from UP, dated March 11, 1997, agreeing both to negotiate trail use/rail banking with CKC and to the extension request.

Because UP has continually agreed to negotiate trail use/rail banking and has not consummated the proposed abandonment, the Board retains jurisdiction over the line and may extend the NITU. CKC has demonstrated that it should be permitted to negotiate with UP, and UP has consented to negotiate with CKC, as the new trail use negotiating party, and has agreed to the requested extension. Accordingly, CKC will be authorized to negotiate a trail use/rail banking agreement with UP, and its request for an extension will be granted. It has shown that the requested extension is necessary and will promote the establishment of trails and rail banking consistent with the Trails Act.

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

It is ordered:

1. The request to extend the interim trail use negotiation period is granted; the negotiation period is extended to April 20, 1997.
2. The NITU served September 28, 1995, and extended by decisions served March 26, 1996, and January 31, 1997, is modified to reflect that CKC is authorized to negotiate a trail use/rail banking agreement with UP.
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary

⁴ Asserting that it filed a statement of willingness as Friends, CKC states that a new statement is being filed because the January 31 decision observed that the Board had no record of the alleged filing.