

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 9, 2008

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).<sup>1</sup> 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.<sup>2</sup> Subsequently, by decision served July 5, 2000, the proceeding was reopened to substitute American Trails Association, Inc. (ATA) as the trail sponsor. By letter filed on July 7, 2000, KER and ATA notified the Board that they had reached an agreement for interim trail use.<sup>3</sup>

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<sup>1</sup> By decision served on September 23, 1999, 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 section 402 permit for storm water discharge is required; 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. By decision served on May 2, 2008, the section 106 historic preservation condition was removed.

<sup>2</sup> By letter filed on 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.

<sup>3</sup> On July 13, 2004, ATA filed a notice of intent to terminate interim trail use for the portion of the right-of-way between milepost 438.5 and milepost 471.0. By decision served on

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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, County filed a request for the issuance of a NITU for the 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. By decision served on January 17, 2002, the requested NITU was issued. By letter filed on July 16, 2002, County notified the Board that an interim trail use/rail banking agreement had been timely reached.

On May 13, 2008, County filed a request to terminate trail use for portions of the right-of-way between milepost 471.0 and milepost 476.4 and between milepost 476.65 and milepost 483.0. County requests that the NITU be vacated as of May 15, 2008.

County has complied with the requirements of 49 CFR 1152.29(d)(2) regarding a request to vacate a NITU. Whenever a trail manager intends to terminate trail use over the right-of-way and sends the Board a request that a NITU be vacated, the Board will reopen the proceeding and vacate the NITU. Therefore, County's request to vacate the NITU will be granted, effective May 15, 2008, as requested.

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. County's request to vacate the NITU is granted.

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July 30, 2004, the proceeding was reopened and the NITU was vacated with respect to that portion of the right-of-way. On September 7, 2004, County filed a request for a NITU for that same portion of the right-of-way. By letter filed on August 8, 2005, the County and KER requested that the NITU request be limited to include only the portion of the right-of-way between milepost 457.9 and milepost 471.0. By decision served on June 2, 2006, the Board issued a NITU for that portion of the right-of-way. According to County, the NITU for that portion of the right-of-way expired without County and KER reaching an agreement.

3. The NITU served on January 17, 2002, is vacated and KER may fully abandon the line, subject to compliance with the environmental consultation conditions imposed in the September 23, 1999 decision.

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

Anne K. Quinlan  
Acting Secretary