

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-406 (Sub-No. 6X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY
COMPANY--ABANDONMENT EXEMPTION--IN MARION
AND MCPHERSON COUNTIES, KS

Decided: June 12, 1997

Central Kansas Railway, Limited (CKR) filed a notice of exemption under 49 CFR 1152 Subpart F--*Exempt Abandonments* to abandon a 33.4-mile portion of its line of railroad known as the McPherson Subdivision from milepost 10 plus 2418 feet at or near Marion to milepost 43 plus 4505 feet at or near McPherson, in Marion and McPherson Counties, KS. A notice of exemption was served and published in the *Federal Register* on March 13, 1996 (61 FR 10428-29).¹ On April 12, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, which authorized a 180-day period for James D. Jennings, dba Jennings & Co. (Jennings), to negotiate an interim trail use/rail banking agreement with CKR for the right-of-way involved in this proceeding. At the request of Jennings, the negotiation period under the NITU was extended by decisions served October 21, 1996, and April 7, 1997. The last extension expired on June 6, 1997.

On June 6, 1997, the Central Kansas Conservancy, Inc. (CKC) a new negotiation party, filed a request for a notice of interim trail use (NITU) for the entire line, under the National Trails System Act (Trails Act), 16 U.S.C. 1247(d). CKC also states that Jennings has agreed to the acquisition of the property by CKC under the Trails Act, 16 U.S.C. 1247(d).² CKC submitted a statement indicating its willingness to assume full financial responsibility for management of, and liability for payment of taxes for, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service. Also on June 6, 1997, CKR indicated its willingness to negotiate with CKC over trail use/rail banking of the line.

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 CKR has not consummated the abandonment and is willing to negotiate with CKC 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 December 13, 1997. If no agreement is reached within that time period, CKR 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.

¹ By decision served April 10, 1996, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to the condition that prior to commencing salvage operations, CKR shall consult with Kansas Department of Health and Environment regarding certification requirements.

² CKC states that it is aware that Jennings and CKR are in the process negotiating a NITU for the same line. By letter filed June 6, 1997, Jennings indicated that it supports the issuance of a NITU between CKC and CKR that would be concurrent to the existing NITU between itself and CKR.

³ *See Rail Abandonments--Supplemental Trails Act Procedures*, 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).

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the *Federal Register* on March 13, 1996, 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 until December 13, 1997.
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 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.
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 of 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 trail use be vacated on a specific date.
6. If an agreement for interim trail use/rail banking is reached by December 13, 1997, interim trail use may be implemented. If no agreement is reached by that time, CKR may fully abandon the line.
7. The decision is effective on the service date.

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

Vernon A. Williams
Secretary