

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-406 (Sub-No. 5X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--
ABANDONMENT EXEMPTION--IN CLARK AND COMANCHE COUNTIES, KS

Decided: July 9, 1997

Central Kansas Railway, Limited Liability Company (CKR) filed a notice of exemption under 49 CFR 1152 Subpart F--*Exempt Abandonments* to abandon a 30.3-mile portion of its line of railroad known as the Englewood Subdivision from milepost 136, at or near Protection, to milepost 166 plus 1846 feet, at or near Englewood, in Clark and Comanche Counties, KS. A notice of exemption was served and published in the *Federal Register* on March 11, 1996 (61 FR 9743).¹ On May 8, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing 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 31, 1996, and April 14, 1997. The last extension expired on July 2, 1997.

On July 2, 1997, the Iowa Trails Council (ITC), a new negotiating party, filed a request to extend the NITU for an additional 90 days, pursuant to section 8(d), of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), so that it could negotiate with CKR for interim trail use. ITC states that an agreement has been reached between CKR and ITC for acquisition of the property by ITC under the Trails Act.² ITC 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 July 2, 1997, CKR indicated its willingness to negotiate with ITC 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 ITC for the right-of-way, a NITU will be issued, with the trail use negotiation period running for 90 days from the service date of this decision or until October 9, 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).

¹ By decision served April 4, 1996, the proceeding was reopened at the request of the Board's Section of Environment 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 Environmental regarding certification requirements.

² ITC states that Jennings and CKR agree to the acquisition of the property by ITC under the Trails Act. By letter filed July 2, 1997, Jennings indicated that it supports the issuance of a NITU between ITC and CKR that would be concurrent with the existing NITU between itself and CKR.

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).

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 March 11, 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 October 9, 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 it be vacated on a specific date.
6. If an agreement for interim trail use/rail banking is reached by October 9, 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