

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-870X

BUTLER COUNTY, KANSAS—ABANDONMENT EXEMPTION—IN BUTLER
COUNTY, KS

Decided: June 1, 2005

Butler County, Kansas (County), filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon its entire 10.6-mile line of railroad between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, KS. Notice of the exemption was served and published in the Federal Register on July 2, 2004 (69 FR 40472). The exemption became effective on August 4, 2004.¹

On May 2, 2005, Butler County Economic Development (BCED), also known as the Butler County Board of Commissioners, late-filed a request for the issuance of a NITU² for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) and 49 CFR 1152.29 in order to rail bank its own line.³ BCED submitted a statement of willingness to

¹ By decision served on August 2, 2004, the proceeding was reopened and the exemption was made subject to the condition that the County consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice before disturbing or destroying any geodetic station markers. By decision served on September 14, 2004, a notice of interim trail use (NITU) was issued to Prairie Travelers, Inc. (PTI), to negotiate with the County for acquisition of the right-of-way for use as a recreational trail for a period of 180 days. The NITU issued to PTI expired on March 13, 2005, without an agreement being reached.

² The July 2, 2004 notice of exemption provided that requests for trail use/rail banking had to be filed by July 12, 2004. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that BCED's late-filed request will be prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

³ A railroad is permitted to rail bank its own line where the railroad represents that the property is suitable for interim trail use and that it will assume financial responsibility for the line. See Roaring Fork Railroad Holding Authority—Abandonment Exemption—in Garfield,

(continued...)

assume financial responsibility for the 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, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. By facsimile filed on May 23, 2005, the County advised the Board that it is willing to negotiate for interim trail use.

Because BCED's request complies with the requirements of 49 CFR 1152.29 and the County is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, the County may fully abandon the line subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As conditioned, this action 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. The late-filed request for a NITU under 16 U.S.C. 1247(d) is accepted.
3. Upon reconsideration, the decision and notice served on September 14, 2004, 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 to permit BCED to negotiate with the County for trail use of the entire line, for a period of 180 days commencing from the service date of this decision and notice (until November 29, 2005), and subject to the conditions imposed in the August 2, 2004 decision.
4. If an interim trail use/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.

(...continued)

Eagle and Pitkin Counties, CO, STB Docket No. AB-547X, slip op. at 4 n.11 (STB served Oct. 16, 1998).

5. 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.

6. 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 specified date.

7. If an agreement for interim trail use/rail banking is reached by November 29, 2005 (the 180th day after service of this decision and notice), interim trail use may be implemented. If no agreement is reached by that time, the County may fully abandon the line, provided that the environmental conditions imposed in the August 2, 2004 decision are met.

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary