

STATE OF KANSAS

205189

KANSAS DEPARTMENT OF TRANSPORTATION
BUREAU OF TRANSPORTATION PLANNING

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James E. Tobaben
Bureau Chief

April 12, 2002



Secretary Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington DC 20423-0001

Dear Mr. Williams:

Re: Docket No. AB-33 (Sub-No. 158X)

Please accept this original and ten copies of a filing in support of the City of Marquette, Kansas, request for reconsideration of its rails to trails request. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "John Jay Rosacker".

John Jay Rosacker
Assistant Bureau Chief, Transportation Planning

enclosures

ENTERED
Office of the Secretary

APR 16 2002

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



AB-33 (Sub-No. 158X)

UNION PACIFIC RAILROAD COMPANY
--ABANDONMENT EXEMPTION--
IN MCPHERSON, ELLSWORTH AND RICE COUNTIES, KS

KANSAS DEPARTMENT OF TRANSPORTATION
FILING IN SUPPORT OF THE CITY OF MARQUETTE'S REQUEST
FOR REVIEW OF THE MARCH 29, 2002 DECISION

• **ENTERED**
Office of the Secretary

APR 16 2002

Part of
Public Record

John Jay Rosacker
Attorney at Law
Assistant Bureau Chief
Transportation Planning
Kansas Department of
Transportation
217 SE 4th
Topeka, KS 66603

Date: April 12, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-33 (Sub-No. 158X)

UNION PACIFIC RAILROAD COMPANY
--ABANDONMENT EXEMPTION--
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Comes now the Kansas Department of Transportation (KDOT), on behalf of the State of Kansas before the Surface Transportation Board (Board) and files its support for the City of Marquette Kansas for review of the Board's decision in this matter.

KDOT disagrees with the Board's interpretation that its jurisdiction ends because abandonments have been consummated on either side of Marquette, cutting the city off from the national rail system. The National Trail Act grants the Board broad power and discretion in establishing trails on abandoned rail lines. The Board should use its discretion in this matter to determine what right-of-way is available to be rail banked for future rail

use. The Board's regulations are permissive on how the trail agreements are set up as long as the railroad and trail proponents reach an agreement. In the present case the City of Marquette wants to preserve a two-mile section of the rail line being abandoned and the Union Pacific is in agreement, but a formal document has not been ratified. The City wants the corridor for future rail use and/or to develop trails and a city street. These objectives are consistent with the "public interest" as it is set out in the national trail act and the Board's regulations. The Board should allow the city of Marquette to preserve this corridor because of the difficulties in the future to obtain this right-of-way when and if rail service is re-established. In the State of Kansas KSA 66-501 gives the railroads the right of eminent domain to acquire right-of-way. This is a relatively simple task in rural farm areas that have few if any improvements. The cost of eminent domain of rural farm ground for right-of-way purposes would be a small part of the cost of re-establishing a rail line.

In cities such as Marquette the practical realities of rail abandonment, are that once the urban right-of-way reverts and is developed, eminent domain becomes too costly. By allowing the City of Marquette to rail bank the two miles it is requesting for trail use, and understanding that railroads can use eminent domain powers to reconnect with the national rail system, the Board using its discretionary powers under the trail act would have an existing legal connection with the national rail system.

Additionally, the Board in fact has granted two similar rails to trails certificates already in Kansas. The Board granted the city of Kingman a three-mile rails to trails certificate that is no longer connected to the national rail system. The Board also granted KDOT a public use certificate at Rago, KS that is no longer connected to the national rail system. Granting the city of Marquette's request for trail use would be consistent with these previous actions in Kansas.

KDOT, on behalf of the city of Marquette, requests the Board grant the trail use as agreed to between the city and the Union Pacific Railroad company.

Respectfully submitted



John Jay Rosacker
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CERTIFICATE OF SERVICE

COPIES OF THE STATE OF KANSAS DEPARTMENT OF TRANSPORTATION'S
FILING HAS BEEN SERVED THIS 12TH OF APRIL, 2002 BY FIRST CLASS
MAIL, POSTAGE PREPAID TO THE FOLLOWING:

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