

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307

FACSIMILE 202-783-6947

KARL MORELL



kmorrell@dc.bjllp.com

September 28, 2009

225785

BY HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20423-001

ENTERED
Office of Proceedings
SEP 28 2009
Part of
Public Record

Re: STB Docket No. 870X, Butler County, Kansas -- Abandonment Exemption -- In Butler County, KS

Dear Acting Secretary Quinlan:

Attached for filing are the original and ten copies of the Joint Petition For Substitution Of Trail Manager.

The City of Augusta is a government entity of the State of Kansas and as such requests a waiver of the filing fee.

If you have any questions, please call me.

Sincerely,

Karl Morell

Enclosures

225785



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-870X

BUTLER COUNTY, KANSAS
-- ABANDONMENT EXEMPTION --
IN BUTLER COUNTY, KANSAS

JOINT PETITION FOR SUBSTITUTION OF TRAIL MANAGER

ENTERED
Office of Proceedings
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Karl Morell
Of Counsel
Ball Janik LLP
1455 F St., N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for:
BUTLER COUNTY ECONOMIC
DEVELOPMENT, BUTLER
COUNTY AND THE CITY OF AUGUSTA

Dated: September 28, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-870X

BUTLER COUNTY, KANSAS
-- ABANDONMENT EXEMPTION --
IN BUTLER COUNTY, KANSAS

JOINT PETITION FOR SUBSTITUTION OF TRAIL MANAGER`

Pursuant to 49 C.F.R. § 1152.29(f), Butler County Economic Development (“BCED”) and the City of Augusta, KS (“Augusta”) submit this joint petition requesting that Augusta be substituted for BCED as the interim trail manager for the portion of the line located between milepost 483.62, at Augusta and milepost 485.2, near Augusta. The Joint Petition is supported by Butler County, KS (“Butler County”).

By decision served June 2, 2005, the Surface Transportation Board (“Board”) granted BCED’s request for the issuance of a notice of interim trail use (“NITU”) for the rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, KS (the “Line”). By letter dated June 3, 2005, BCED notified the Board that BCED and Butler County had consummated a trail use/rail banking agreement for the Line.

BCED and Augusta have entered into an agreement to transfer the ownership of, and management responsibilities for, a 1.58-mile segment of the Line. The agreement with Augusta will transfer to Augusta the portion of the Line located between mileposts 483.62 and 485.2.

Augusta is a political subdivision organized under the laws of Kansas. In its agreement with BCED, Augusta has agreed to use the corridor for public, trail and recreation uses, consistent with the National Trails System Act, as amended, 16 U.S.C. § 1247(d), and the NITU issued by the Board in this proceeding.

The parties intend to transfer responsibility for the segment of the right-of-way within 30 days of the Board's decision authorizing the substitution.

Attached as Exhibit 1 is the Board's June 2, 2005, decision in this proceeding, issuing the NITU on behalf of BCED. Attached as Exhibit 2 is the Statements of Willingness to Assume Financial Responsibility by Augusta.

BCED and Augusta respectfully urge the Board to reopen this proceeding, vacate, in part, the existing NITU and issue an appropriate replacement NITU on behalf of Augusta for the portion of the Line located between mileposts 483.62 and 485.2.

Respectfully submitted,



Karl Morell
Of Counsel
Ball Janik LLP
1455 F St., N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for:
BUTLER COUNTY ECONOMIC
DEVELOPMENT, BUTLER
COUNTY AND CITY OF AUGUSTA

Dated: September 28, 2009

35856
DO

SERVICE DATE – JUNE 2, 2005

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

STB DOCKET NO. AB-870X

**BUTLER COUNTY, KANSAS
-- ABANDONMENT EXEMPTION --
IN BUTLER COUNTY, KANSAS**

**STATEMENT OF WILLINGNESS
TO ASSUME FINANCIAL RESPONSIBILITY**

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29, the City of Augusta, Butler County, Kansas is willing to assume 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 portion of the right-of-way formerly owned by Butler County, and currently managed by Butler County Economic Development ("BCED"), as identified below.

The property is located between railroad milepost 483.62, at Augusta, and milepost 485.2, near Augusta, in Butler County, KS. The map of the right-of-way is attached.

The City of Augusta acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

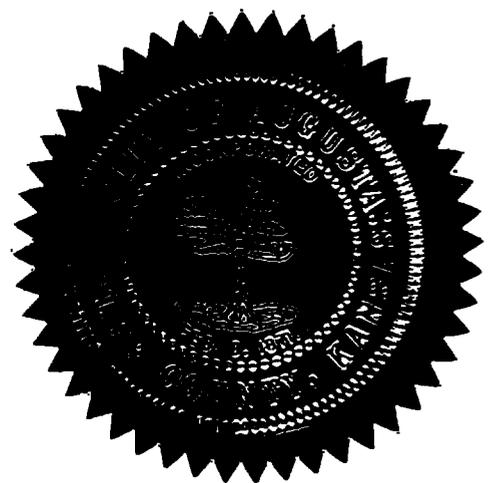
A copy of this Statement is being served on Butler County and BCED this August 17, 2009.



Date 8/17/09

Mayor Kristey Williams
City of Augusta
113 E. 6th
Augusta, KS 67010

On behalf of the City of Augusta



Neighborhood Map

