

BEFORE THE SURFACE TRANSPORTATION BOARD

NEBKOTA RAILWAY, INC.--)
ABANDONMENT EXEMPTION--IN)
DAWES AND SHERIDAN COUNTIES, NE) Docket No. AB-988 (Sub-No 1X)
_____)

Petition of Nebraska Game and Parks Commission
to Re-Open Abandonment Proceeding In Order to Issue
Notice of Interim Trail Use or Public Use Condition

The Nebraska Game and Parks Commission (NGPC) hereby petitions the Board to reopen the above-captioned abandonment proceeding and request the Board to issue a notice of interim trail use (NITU) or a Public Use Condition concerning the subject right-of-way, which extends from M.P. 404.3 near Chadron 69337 and the end of the line at M.P. 374 at Rushville 69360 in Dawes and Sheridan Counties, NE, a distance of approximately 30.3 miles, pursuant to Section 8(d) of the National Trails Systems Act, 16 U.S.C. § 1247(d) (Trails Act). A Statement of Willingness to Assume Financial Responsibility signed by Rex Amack, Director of the Nebraska Game and Parks Commission and previously filed in this matter, to assume full responsibility for this right-of-way is attached as Exhibit 1. A previous filing by Nebkota Railway, Inc. (NRI) regarding its conditional consent to an NITU is attached as Exhibit 2. NGPC simply wishes to preserve the ability under the Board's procedures for the Board to issue an NITU or Public Use Condition in this matter.

The segment in question is part of a previous written agreement between NGPC, the Rails to Trails Conservancy (RTC) and NRI for NRI to convey the property to the NGPC in the event NRI ceased railway operations. NGPC now wishes to conclude negotiations on the conveyance, and requests that the proceeding be re-opened in order to issue a NITU or Public Use Condition so that such condition may be made part of the conveyance under the auspices of the Trails Act.

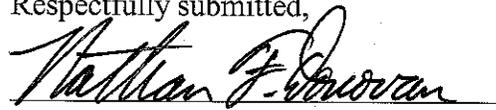
In addition to its request that the abandonment proceeding be re-opened and a NITU or Public Use Condition be issued pursuant to the Trails Act, NGPC also asks that, if necessary, effective date of the Board's Decision in this matter served August 22, 2007 be extended from September 21, 2007 to March 21, 2008 or such later date as the Board deems necessary, in order to effectuate issuance of a NITU or Public Use Condition. Given the recent filing of the Statement of Willingness by NGPC and conditional consent by NRI, NGPC contends that the circumstances of this situation make it appropriate for extension of the effective date of the Board's Decision and issuance of a NITU or Public Use Condition in this proceeding, rather than allowing the exemption to become effective on September 21, 2007.

Discussion

This Board's regulations provide that an abandonment proceeding will be re-opened to accept a "late-filed" trail use statement "[i]f abandonment has not been consummated and the railroad is willing to negotiate." 49 C.F.R. § 1152.29(e)(1). Here, the abandonment has not been consummated, and NRI is willing to consent if the exemption will be allowed to become effective on September 21, 2007. NGPC contends that NRI is contractually obligated to consent to issuance of a NITU, and NGPC is concerned that the ability of the Board to issue a NITU or Public Use Condition may be impaired if the exemption becomes effective. Accordingly, Petitioner requests that the abandonment proceeding be re-opened and a NITU issued for 180 days from September 22, 2007, which would be March 21, 2007 (or later date of the Board's decision if appropriate), to allow NGPC and NRI an opportunity to negotiate an interim trail use/railbanking agreement. In the alternative, NGPC requests the Board issue a Public Use Condition.

NGPC asserts that no significant harm will occur by the extension of the effective date of the Board's Decision and reopening of the proceeding. Due to the fact that NRI is contractually obligated to agree to issuance of a NITU, NGPC believes that such process can be concluded promptly. For the reasons stated, NGPC requests that the abandonment proceeding be re-opened and a NITU or Public Use Condition be issued pursuant to the Trails Act. If necessary to effectuate the issuance of such an order, NGPC further requests that the effective date of the Board's recent Decision in this matter be extended from September 21, 2007 to March 21, 2008.

Respectfully submitted,

 9/17/2007
Nebraska Game and Parks Commission Date

By: Nathan F. Donovan

Assistant Attorney General

State of Nebraska

Nebraska Game and Parks Commission

2200 N. 33rd St.

Lincoln, NE 68503-0370

(402) 471-5539

Certificate of Service: I, , certify that on the date state above, I served this document by US Mail, postage prepaid, on the following individuals:

Fritz R. Kahn, Esq.
1920 N Street, NW 8th Floor
Washington, D.C. 20036

Andrea Ferster, General Counsel
Rails-to-Trails Conservancy
1100 17th Street, N.W. 10th Floor
Washington, D.C. 20036

Exhibit I - Docket No. AB-988 (Sub-No. 1X)
BEFORE THE SURFACE TRANSPORTATION BOARD *9/17/2007*

NEBKOTA RAILWAY, INC.—)
ABANDONMENT EXEMPTION--IN)
DAWES AND SHERIDAN COUNTIES,) Docket No. AB-988 (Sub-No. 1X)
NEBRASKA)
_____)

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 Nebraska Game and Parks Commission ("NGPC") is willing, to the extent permitted by law, to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way in the above-captioned proceeding, owned and operated by Nebkota Railway, Inc..

The property extends from milepost 404.3 near Chadron 69337 and the end of the line at milepost 374 at Rushville 69360, in Dawes and Sheridan Counties, NE., a distance of approximately 30.3 miles. The right of way is part of a line proposed for abandonment in Docket AB-988, Sub-No. 1X.¹ A map depicting the right-of-way is attached.

NGPC acknowledges that use of the right-of-way is subject to the user 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 Nebkota Railway, Inc. on the same date it is being served on the Surface Transportation Board.

Rex Amack

Rex Amack, Director
Nebraska Game and Parks Commission
2200 N. 33d Street
Lincoln, NE 68503-0370

August 28, 2007
Date

Certificate of Service: I, *Diane A. Westerkoff* certify that on the date stated above, I served this document by US Mail, postage prepaid, on the following individuals:

Fritz R. Kahn, Esq.
1920 N Street, N.W.
Washington, D.C. 20036

Andrea Ferster, General Counsel
Rails-to-Trails Conservancy
1100 17th Street, N.W. 10th Fl.
Washington, D.C. 200036

¹ See *Nebokota Railway -- Abandonment Exemption -- in Dawes and Sheridan Counties, NE, AB-988 (Sub-No. 1X)*, served August 22, 2007.

Exhibit 2 - Docket No. AB-988 (Sub-No. IX)
LAW OFFICES
FRITZ R. KAHN, P.C.
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9/17/2007

August 31, 2007

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Dear Secretary Williams:

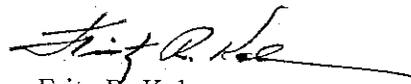
This refers to STB Docket No. AB-988 (Sub-No. IX), Nebkota Railway, Inc. - Abandonment Exemption - In Dawes and Sheridan Counties, NE, and to the Decision of the Board, served August 22, 2007.

Nebkota Railway, Inc., will consent to the filing by the Nebraska Game and Parks Commission of a request that the Board belatedly grant it a trails condition, pursuant to 49 C.F.R. 1152.29, but only after no OFA has been received and the exemption has become effective on September 21, 2007. Nebkota Railway, Inc., will not consent to the issuance of a Decision and Notice of Interim Trail Use or Abandonment if it will extend the time for filing an OFA and not allow the exemption to be effective September 21, 2007.

Additional copies of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Nathan R. Donovan, Esq.
Charles H. Montange, Esq