

SERVICE DATE – SEPTEMBER 30, 2021

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1317X

KISKI JUNCTION RAILROAD, INC.—ABANDONMENT EXEMPTION—  
IN ARMSTRONG AND WESTMORELAND COUNTIES, PA.

Decided: September 30, 2021

Kiski Junction Railroad, Inc. (KJRR), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon two segments of rail line: (1) Line Code 2229, from at or near milepost 30.0 in Alladin, Pa., to milepost 28.8, in Armstrong and Westmoreland Counties, Pa.; and (2) Line Code 2242, from milepost 0.0 at the connection of Line Code 2229, to milepost 4.0, in Armstrong County (together, the Line). Notice of the exemption was served and published in the Federal Register on September 2, 2021 (86 Fed. Reg. 49,409). The exemption is scheduled to become effective on October 2, 2021.

Armstrong Trails, Inc. (Armstrong Trails), filed a request for issuance of a notice of interim trail use or abandonment (NITU) on September 3, 2021, to establish interim trail use/rail banking on the Line under the National Trails System Act, 16 U.S.C. § 1247(d). KJRR filed a letter on September 7, 2021, agreeing to negotiate with Armstrong Trails toward an interim trail use agreement for the Line.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on September 7, 2021, recommending that one condition be imposed on any decision granting abandonment authority. In the Draft EA, OEA stated that the National Geodetic Survey (NGS) indicated that one geodetic survey marker is present in the right-of-way but later indicated that the marker might already have been destroyed by past rail construction. Because there remains some uncertainty as to whether the marker remains, OEA recommended a condition requiring KJRR to notify NGS at least 90 days prior to beginning abandonment-related salvage activities to allow time for any geodetic survey markers to be preserved.

OEA issued its Final Environmental Assessment (Final EA) on September 27, 2021, indicating that no new comments were received and recommending again that the previously recommended condition be imposed. Accordingly, based on OEA's recommendation, the one condition proposed in the Final EA will be imposed.

Interim Trail Use. Armstrong Trails' request for a NITU complies with the requirements of 49 C.F.R. § 1152.29, and KJRR states that it is willing to negotiate interim trail use with Armstrong Trails. Because KJRR agrees to Armstrong Trails' request for a NITU and Armstrong Trails' request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will

be issued. The parties may negotiate an agreement for the right-of-way during the one-year period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2), (h). If no agreement is reached within one year, KJRR may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Petition for Extension of Time to File an Intent to File an Offer of Financial Assistance. On September 13, 2021, the Railroad Equipment Restoration Association (RERA) filed a petition requesting an extension of time to submit a formal expression of intent to file an Offer of Financial Assistance (OFA), or, in the alternative, requesting that its filing be considered as its formal expression of intent. On September 15, 2021, KJRR filed a reply objecting to RERA's requests.

The petition for an extension will be denied, as “allowing late filing of an OFA over the owning rail carrier’s objection would be contrary to Congress’s direction to streamline the abandonment and OFA process.” Gen. Ry.—Aban. Exemption—in Osceola & Dickinson Cntys., Iowa, AB 1067 (Sub-No. 2X), slip op. at 2 (STB served Oct. 24, 2008) (citing Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. § 10903, 1 S.T.B. 894, 909-10 (1996); R.R. Ventures, Inc. v. STB, 299 F.3d 523, 531 (2002)). Furthermore, RERA’s September 13, 2021 filing cannot be considered a formal expression of intent to file an OFA, as RERA has not attempted to satisfy the criteria at 49 C.F.R. § 1152.27(c)(1)(ii) to show that it is preliminarily financially responsible, as required by 49 C.F.R. § 1152.27(c)(2)(i).<sup>1</sup>

This decision, and the proposed abandonment if implemented as conditioned, 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 notice served and published in the Federal Register on September 2, 2021, 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 the parties to negotiate for trail use for the rail line, for a period of one year from the service date of this decision and notice, until September 30, 2022.
3. RERA’s petition for extension of time to file an expression of intent to file an OFA and its alternative request to consider its pleading as an official expression of intent to file an OFA are denied.

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<sup>1</sup> Because RERA’s filing does not constitute a formal expression of intent to file an OFA, the automatic 10-day tolling of the exemption’s effective date under 49 C.F.R. § 1152.27(c)(2)(i) does not occur here.

4. KJRR shall notify NGS at NGS.Infocenter@noaa.gov at least 90 days prior to beginning abandonment-related salvage activities.<sup>2</sup>

5. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

6. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 5 above.

7. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2), (h).

8. If interim trail use/rail banking is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use/rail banking agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

9. If an agreement for interim trail use/rail banking is reached by September 30, 2022, for the right-of-way, interim trail use/rail banking may be implemented. If no agreement is reached, KJRR may fully abandon the Line, subject to any outstanding conditions.

10. This decision and notice is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

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<sup>2</sup> If Armstrong Trails implements trail use on the Line (or a portion thereof), compliance with this condition is not required with respect to any portion of the Line designated for trail use for the duration of such use.