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THOMAS F. McFARLAND

October 9, 2019

By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings
October 9, 2019
Part of
Public Record

Re: Docket No. AB-853 (Sub-No. 1X), *Kansas & Oklahoma Railroad, Inc. --
Abandonment Exemption -- in Hodgeman, Comanche, Kiowa, and Pratt Counties,
KS*

Dear Ms. Brown:

Hereby transmitted is a Reply To Response To Board Decision Served September 13,
2019 for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland
*Attorney for Sunflower Rails-Trails
Conservancy, Inc.*

TMcF:kl:1870 \efSTB2

cc: All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

KANSAS & OKLAHOMA RAILROAD,)
INC. -- ABANDONMENT EXEMPTION) DOCKET NO. AB-853
-- IN HODGEMAN, COMANCHE,) (SUB-NO. 1X)
KIOWA, AND PRATT COUNTIES, KS)

**REPLY TO RESPONSE TO BOARD DECISION
SERVED SEPTEMBER 13, 2019**

SUNFLOWER RAIL-TRAILS
CONSERVANCY, INC.
P.O. Box 44-2043
Lawrence, KS 66044

Replicant

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Attorney for Replicant

DUE DATE: October 23, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

KANSAS & OKLAHOMA RAILROAD,	)	
INC. -- ABANDONMENT EXEMPTION	)	DOCKET NO. AB-853
-- IN HODGEMAN, COMANCHE,	)	(SUB-NO. 1X)
KIOWA, AND PRATT COUNTIES, KS	)	

**REPLY TO RESPONSE TO BOARD DECISION
SERVED SEPTEMBER 13, 2019**

Pursuant to Ordering Paragraph 2 on page 2 of the Board's decision served September 13, 2019, Sunflower Rail-Trails Conservancy, Inc. (SRTC) hereby replies to a Response to that decision by Mr. Marc A. Elster (Mr. Elster), dated September 20, 2019.

REPLY

SRTC's Response to Board Decision Served September 13, 2019 (SRTC Response) filed on October 2, 2019, and a Supplemental Filing of Kansas & Oklahoma Railroad, Inc. (K&O), filed on October 3, 2019, provide ample evidence to support a finding that railbanking-interim recreational trail use agreements were timely reached in regard to rights-of-way between Coats and Protection, KS, and between Hanston and Jetmore, KS.

Mr. Elster has not provided evidence to support a finding to the contrary.

Consequently, the Board should find that those rights-of-way are covered by valid railbanking-interim recreational trail use agreements.

It should be noted that Kansas Statute 66-525 relied on by Mr. Elster is federally preempted by the National Trails System Act (NTSA) insofar as the Kansas law purports to invalidate conveyances by a railroad company of strips of land for rights-of-way to any party

other than the owner of the servient estate. The Kansas law would prevent a rail carrier from conveying an easement for railroad purposes to a trail group for railbanking and interim recreational use. That would be directly contrary to the provisions of the NTSA that validate such conveyances. The Board should so find.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should find:

(1) that Kansas & Oklahoma Railroad, Inc. and Sunflower Rail-Trails Conservancy, Inc. entered into an agreement for railbanking and interim recreational trail use under the National Trails System Act, 16 U.S.C. § 1247(d), (NTSA) on a timely basis, of a right-of-way between Coats and Protection, KS, and that such agreement continues to be in effect at present; and

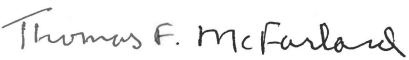
(2) (a) that Mr. Marc Elster does not have legitimate standing to seek a determination from the Board as to whether a right-of-way between Hanston and Jetmore, KS is covered by a valid agreement for railbanking and interim recreational trail use under NTSA; and/or

(b) that Kansas & Oklahoma Railroad, Inc. and Sunflower Rails-Trails Conservancy, Inc. entered into an agreement for railbanking and interim recreational trail use under NTSA, on a timely basis, of a right-of-way between Hanston and Jetmore, KS, and that such an agreement continues to be in effect at present.

Respectfully submitted,

SUNFLOWER RAIL-TRAILS
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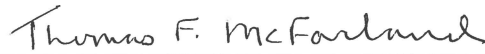
DUE DATE: October 23, 2019

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2019, I served the foregoing document, Reply To Response To Board Decision Served September 13, 2019, on the following parties of record, by e-mail.

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