

SERVICE DATE – OCTOBER 19, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36034

SUNFLOWER RAILS-TRAILS CONSERVANCY, INC.—PETITION FOR DECLARATORY
ORDER—SALE OF RAILBANKED RIGHT-OF-WAY

Digest:¹ This decision discontinues the proceeding and removes the requirement that Sunflower Rails-Trails Conservancy, Inc., submit reports to the Board every six months.

Decided: October 17, 2017

On May 12, 2016, Sunflower Rails-Trails Conservancy, Inc. (Sunflower), filed a petition for declaratory order asking that the Board find that the 2004 sale by Neosho County, Kan. (County), of three parcels of railbanked right-of-way for failure to pay taxes violated section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and the Board's regulations implementing that act at 49 C.F.R. § 1152.29. In a decision served on February 23, 2017, the Board granted Sunflower's petition. The Board found that the three parcels of land were railbanked in 1998 in accordance with the Trails Act and the Board's Trails Act regulations. As such, the parcels were still part of a line within the national rail network and subject to the Board's exclusive jurisdiction. By foreclosing on, and then selling, the three parcels for failure to pay taxes, the County unilaterally took actions that would prevent reactivating rail service on a railbanked line. Therefore, the Board found that the foreclosures and sales were preempted by federal law.

The Board left for an appropriate court the issue of voiding the sales. To monitor the situation, the Board ordered Sunflower to provide a report every six months.

On August 22, 2017, Sunflower filed its first report. It notes that, in an Agreed Journal Entry Vacating Portions of Judgment and Original Journal Entry in the District Court of Neosho County, Kan., it was agreed by all parties and the court that the sales shall be vacated. Sunflower states that this would "cleanse" its title to the three parcels and that Sunflower therefore "conclude[s] this case." No replies to the report were filed.

As discussed in the February 23 decision, the Board's chief concern once a trail condition has been imposed is that nothing occur that would preclude a railroad's right to reassert control

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

over the right-of-way at some future time to revive active service. Here, the sales that were preempted by federal law have been vacated, and the rail line remains available for reactivation. Therefore, the agency's concern about the infringement on the rail line has been allayed. The County has not filed a reply. Under these circumstances, it is appropriate for the Board to end Sunflower's reporting requirement and discontinue this proceeding.

It is ordered:

1. Sunflower's reporting requirement is ended and this proceeding is discontinued.
2. This decision is effective on its date of service.

By the Board, Board Members Begeman and Miller.