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SERVICE DATE – MARCH 7, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-853 (Sub-No. 1X)

KANSAS & OKLAHOMA RAILROAD, INC.–ABANDONMENT EXEMPTION–IN
HODGEMAN, COMANCHE, KIOWA, AND PRATT COUNTIES, KS

Decided: March 7, 2008

Kansas & Oklahoma Railroad, Inc. (K&O) filed a verified notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon two rail line segments as follows: (1) a 10.7-mile rail line between milepost 36.3 at Hanston, and milepost 47.0 at Jetmore, in Hodgeman County, KS; and (2) a 46.8-mile rail line between milepost 589.2 at Coats, and milepost 636.0 at Protection, in Comanche, Kiowa, and Pratt Counties, KS. Notice of the exemption was served and published in the Federal Register on August 27, 2003 (68 FR 51637). The exemption was scheduled to become effective on September 26, 2003.

By decision served on September 29, 2003, an environmental condition was imposed in this proceeding requiring K&O to consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers in order to plan for the markers' relocation. That condition remains in effect.

On November 25, 2003, a decision and notice of interim trail use or abandonment (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), was served reopening the proceeding and establishing a 180-day period for American Trails Association, Inc. (ATA) to negotiate an interim trail use/rail banking agreement with K&O for acquisition of the right-of-way. On October 24, 2007, ATA filed a notice of intent to terminate trail use over the above line segments, pursuant to 49 CFR 1152.29(d)(2), and requested that the NITU be vacated, effective November 5, 2007. By decision served on November 13, 2007, the Board reopened the proceeding and granted ATA's request for vacation of the NITU. The Board indicated that K&O may fully abandon the line segments subject to compliance with the previously imposed environmental condition.

On February 14, 2008, Hodgeman County Economic Development (the County), filed a request for issuance of a NITU for the 10.7-mile portion of the right-of-way between milepost 36.3 at Hanston, and milepost 47.0 at Jetmore, in Hodgeman County, KS.¹ The County

¹ A NITU was issued on February 4, 2008, establishing a 180-day period for Sunflower Recreational Trails, Inc., to negotiate with K&O for the 46.8-mile segment between milepost 589.2 at Coats, and milepost 636.0 at Protection, in Comanche, Kiowa, and Pratt Counties, KS.

has submitted a statement of willingness to 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. In a letter filed on February 26, 2008, K&O states that it has not consummated the abandonment and is willing to negotiate for trail use.

Because the County's request complies with the requirements of 49 CFR 1152.29 and K&O is willing to negotiate for trail use, a NITU will be issued for the aforementioned segment. 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, K&O may fully abandon this segment of rail line, subject to compliance with the previously imposed environmental condition. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future restoration for railroad purposes.

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 request for a NITU, under 16 U.S.C. 1247(d), as to the 10.7-mile line segment between milepost 36.3 and milepost 47.0 in Hodgeman County is granted.
3. If an interim trail use/rail 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.
4. 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.
5. 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.
6. If an agreement for interim trail use/rail banking is reached by September 3, 2008, interim trail use may be implemented. If no agreement is reached by that time, K&O may fully abandon the line, subject to the previously imposed environmental condition.

7. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary