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SERVICE DATE - SEPTEMBER 15, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-470X

SOUTHEAST KANSAS RAILROAD COMPANY--ABANDONMENT  
EXEMPTION--IN VERNON AND BARTON COUNTIES, MO

Decided: September 13, 2000

Southeast Kansas Railroad Company (SEK) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 24.1-mile portion of its line of railroad between milepost 319.3, at Nassau Junction Station, and milepost 343.4, at or near Liberal, in Barton and Vernon Counties, MO. Notice of the exemption was served and published in the Federal Register on October 11, 1996 (61 FR 53487-88). The exemption became effective on November 10, 1996.<sup>1</sup>

By petition filed August 21, 2000, American Trails Association, Inc. (ATA) late-filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d), in order to negotiate with SEK for acquisition of the right-of-way for use as a trail.<sup>2</sup> ATA submitted a statement indicating its willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of, and for payment of any and all taxes that may be levied or assessed against, the right-of-

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<sup>1</sup> By decision served November 7, 1996, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to the conditions that SEK: (1) remove only the minimum amount of vegetation necessary to complete salvage operations; (2) conduct salvage operation near waterways only when water levels are low or absent; (3) restore riparian areas, banks, etc., to a stable condition through recontouring and revegetation as necessary; (4) minimize the use of machinery in waterways; and (5) if more than five acres of land will be disturbed, consult with the Missouri Department of Natural Resources Water Pollution Control Program to determine if permits are required.

<sup>2</sup> The October 11 notice provided that trail use/rail banking requests had to be filed no later than October 21, 1996. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that ATA's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company--Abandonment Exemption--In Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. By reply filed September 8, 2000, SEK indicated that the abandonment has not been consummated and that it is willing to negotiate with ATA for interim trail use and rail banking for the entire line.

Trail use requests may be accepted as long as the Board retains jurisdiction over the involved right-of-way<sup>3</sup> and the carrier is willing to enter into negotiations. Inasmuch as SEK has not consummated the abandonment and is willing to negotiate with ATA for the right-of-way, a NITU will be issued with the trail use negotiation period running 180 days from the service date of this decision or until March 14, 2001. If no agreement is reached within 180 days, SEK may fully abandon the line, provided that the environmental conditions imposed in the decision served November 7, 1996, are met. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This decision 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. Upon reconsideration, the notice of exemption published in the Federal Register on October 11, 1996, 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, for a period of 180 days from the service date of this decision and notice (until March 14, 2001), subject to the environmental conditions imposed in the November 7, 1996 decision.
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 for the right-of-way.

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<sup>3</sup> See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--in Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

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 March 14, 2001, interim trail use may be implemented. If no agreement is reached by that time, SEK may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary