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SERVICE DATE - OCTOBER 14, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-471 (Sub-No. 4X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY—
ABANDONMENT EXEMPTION—IN CRAWFORD, WILSON, ELK AND GREENWOOD
COUNTIES, KS, AND OSAGE AND TULSA COUNTIES, OK

Decided: October 8, 2003

South Kansas and Oklahoma Railroad Company (SKO) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon: (1) a 35-mile line of railroad between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall, in Osage and Tulsa Counties, OK; (2) a 6-mile line of railroad between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee, in Crawford County, KS; and (3) a 23.5-mile line of railroad between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk, and Greenwood Counties, KS.¹ On November 29, 2000, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for SKO to negotiate a trail use agreement with: (1) the City of Pittsburg for the 6-mile portion of the right-of-way between milepost 359.0 near Pittsburg and milepost 365.0 near Cherokee; and (2) the Trust for Public Land (TPL) for the 35-mile portion of the right-of-way between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall. SKO and TPL reached a trail use agreement as to the portion of the right-of-way between milepost 153.0 and milepost 157.10. By decisions served on June 1, 2001, and December 31, 2001, the negotiation period was extended to May 24, 2002, at TPL's request for the portion of the right-of-way between milepost 157.10 and milepost 188.0.² TPL and SKO reached a trail use agreement as to the portion of the right-of-way between milepost 157.10 and milepost 163.21 and Tulsa County was subsequently authorized to replace TPL as the interim trail user for that portion of the right-of-way by decision served on April 24, 2002. The negotiating period under the NITU was extended for the portion of the right-of-way

¹ Notice of the exemption was served and published in the Federal Register on October 6, 2000 (65 FR 59891-92).

² The City of Tulsa was subsequently authorized to replace TPL as the trail user between milepost 153.05 and milepost 157.10.

between milepost 163.21 and milepost 188.0 several times; the latest extension is scheduled to expire on November 25, 2003.³

On September 10, 2003, Land Legacy Inc. (LLI), filed a petition requesting the Board to vacate the existing NITU and issue an appropriate replacement NITU substituting LLI as the interim trail manager for the portion of the right-of-way between mileposts 163.21 and 188.0. LLI states that, on May 22, 2003, TPL and SK&O consummated a trail use/rail banking agreement with regard to the portion of the right-of-way within Osage County, between milepost 163.21 and milepost 188.0. LLI also states that, on that same date, TPL and it entered into an agreement whereby TPL conveyed its interest in that portion of the right-of-way to LLI, which will hold title and maintain the rail-trail, working cooperatively with Osage County local entities. LLI also states that, on June 2, 2003, it filed a quitclaim deed with regard to that portion of the right-of-way with Osage County Clerk's Office. As part of its September 10 filing, LLI submitted a statement of willingness to assume financial responsibility as the new trail manager.

LLI's submission is in compliance with the requirements of section 1152.29(f). Therefore, this proceeding will be reopened and the requested relief will be granted.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITUs served April 24, 2002, and November 12, 2002, are vacated.
3. A replacement NITU designating LLI as the new trail manager for the portion of the right-of-way between milepost 163.21 and milepost 188.0 is issued, effective on the service date of this decision.
4. The new trail user is required 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.

³ The most recent extension of the negotiation period under the NITU between milepost 57.10 and milepost 163.21 was authorized by decision served June 26, 2003.

5. Interim trial use/rail banking is subject to the future restoration of rail service and to the new user continuing to meet the financial obligations for the right-of-way.

6. If the new trail user intends to terminate trail use, it must send the Board a copy of this NITU and request that trail use be vacated on a specified date.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary