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SERVICE DATE - NOVEMBER 25, 2003

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: November 21, 2003

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, the exemption was made subject to an environmental condition 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. Also, by decision served on October 14, 2003, a public use condition was imposed for a period of 180 days for that portion of the right-of-way between mileposts 589.2 and 636.0.¹ That condition is scheduled to expire on March 24, 2004.

On November 12, 2003, American Trails Association, Inc. (ATA) late-filed a request for the issuance of a notice of interim trail use (NITU) for the two rail segments under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with K&O for acquisition of the right-of-way for use as a trail.² ATA has submitted a statement of willingness

¹ A simultaneously filed trail use request was denied at that time because K&O was unwilling to negotiate with the trail proponents.

² The served and published notice provided that any request for trail use/rail banking under 49 CFR 1152.29 would be due no later than September 8, 2003. The Board's policy is to accept filings after the due date when good cause is shown. See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997). 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).

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 payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. In a response submitted on the same date, K&O indicated that it has not consummated the abandonment of the line segments and that it is willing to negotiate with ATA for interim trail use.

Because ATA'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. 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 the line, provided the previously imposed environmental condition is met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to future restoration for railroad purposes.

As conditioned, 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 late-filed request for a NITU under 16 U.S.C. 1247(d) is accepted.
3. Upon reconsideration, the notice of exemption served and published in the Federal Register on August 27, 2003, exempting the abandonment of the lines 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.
4. 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.
5. 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.

6. 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.

7. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice (until May 23, 2004), interim trail use may be implemented. If no agreement is reached by that time, K&O may fully abandon the line, provided the previously imposed environmental condition has been met.

8. This decision and notice is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary