

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-471 (Sub-No. 3X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY--  
ABANDONMENT EXEMPTION--IN CHEROKEE  
AND ALLEN COUNTIES, KS

Decided: November 3, 2006

South Kansas and Oklahoma Railroad Company (SKO) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon: (1) an 8-mile line of railroad between milepost 109.0 at Iola and milepost 117.0 at Humboldt, in Allen County, KS; and (2) a 5-mile line of railroad between milepost 382.0 at Sherwin and milepost 387.0 at Faulkner, in Cherokee County, KS. Notice of the exemption was served and published in the Federal Register on December 4, 2000 (65 FR 75817). By decision and notice of interim trail use or abandonment (NITU) served on March 13, 2001, the proceeding was reopened, and a 180-day period was authorized for the American Trails Association, Inc. (ATA) to negotiate an interim trail use/rail banking agreement with SKO for the right-of-way involved in this proceeding, pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).<sup>1</sup> In a letter filed on March 21, 2001, ATA notified the Board that an interim trail use/rail banking agreement had been reached.

In a joint motion filed on October 27, 2006, ATA and the City of Iola (Iola) request Board authorization for substitution of Iola as the new trail user, and the termination of ATA as the interim trail manager, for the portion of the right-of-way between milepost 109 near Lincoln Road and milepost 110.5 at South Nevada Road, a distance of 1.5 miles in Allen County, KS. ATA and Iola request that the authorization be made effective on November 1, 2006.<sup>2</sup>

Iola submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that the right-of-way as a trail is subject to possible future reconstruction and reactivation of the right-of-way

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<sup>1</sup> By decision served January 2, 2001, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to the condition that SKO not conduct salvage activities or dispose of the line until the completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531.

<sup>2</sup> ATA states that it will continue to be the trail operator of the remainder of the right-of-way between milepost 110.5 at Iola and milepost 117.0 at Humboldt.

for rail service. Iola has made the required showing under 49 CFR 1152.29(f) for the substitution of interim trail user. Accordingly, the requested relief will be granted.

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. The NITU served on March 13, 2001, is vacated for the portion of the right-of-way between milepost 109 and milepost and milepost 110.5.
3. A replacement NITU is issued designating Iola as the new trail user effective on November 1, 2006, subject to the environmental condition imposed in the decision served January 2, 2001, for the 1.5-mile portion of the right-of-way between milepost 109 and milepost 110.5.
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 identified portion of the right-of-way.
5. Interim trail 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 the NITU and request that trail use be vacated on a specific date.
7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary