

33944
DO

SERVICE DATE - OCTOBER 14, 2003

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: October 10, 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, 2003.¹

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding which was served on August 29, 2003. In the EA, SEA indicated that the right-of-way may be suitable for other public use following abandonment. By joint request filed on August 20, 2003, Short Grass Prairie Trail, Inc., and Iowa Trails Council, Inc. (petitioners), seek issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and imposition of a public use condition under 49 U.S.C. 10905, on that portion of the right-of-way between milepost 589.2 and milepost 636.0. Petitioners state that the 180-day period is needed to negotiate with K&O for acquisition of the relevant portion of the right-of-way for the purpose of creating a public trail.² Petitioners further request that K&O be prohibited from removing any trail related structures, such as bridges, trestles, culverts and ballast, for a period of 180 days.

K&O has not expressed a willingness to negotiate with petitioners for interim trail use. Therefore, because 16 U.S.C. 1247(d) permits negotiations for interim trail use only on a

¹ 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.

² Petitioners submitted information as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reactivation for rail service.

voluntary basis, the Board cannot issue a NITU in these circumstances. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609.³ To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Petitioners have satisfied these requirements and, therefore, a 180-day public use condition will be imposed for that portion of the right-of-way between mileposts 589.2 and 636.0, commencing from the September 26, 2003 effective date of the exemption. K&O may remove tracks, ties, and signal equipment on the right-of-way, but is required to leave any trail related structures, such as bridges, trestles, culverts and tunnels intact during that period. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes. Therefore, K&O is not required to deal exclusively with petitioners, but may engage in negotiations with other interested persons.

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 issuance of a NITU is denied.
3. The request for imposition of a public use condition is granted as to that segment of right-of-way between mileposts 589.2 and 636.0. The exemption of the abandonment of the line described above is subject to the condition that K&O keep intact that portion of the right-of-way underlying the tracks between mileposts 589.2 and 636.0, including bridges, trestles, culverts and tunnels (but not track, ties and signal equipment), for a period of 180 days from the September 26, 2003 effective date of the exemption (until March 24, 2004), to enable any State or local government agency, or other interested person to negotiate the acquisition of the line for public use.

³ Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary