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SERVICE DATE – JANUARY 24, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-471X

SOUTH KANSAS AND OKLAHOMA RAILROAD, INC.—ABANDONMENT
EXEMPTION—IN SUMNER COUNTY, KS

Decided: January 22, 2008

South Kansas and Oklahoma Railroad, Inc. (SKO) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 9.2-mile portion of its line of railroad between milepost 257.2, at Oxford, and milepost 266.4, near Wellington, in Sumner County, KS. Notice of the exemption was served and published in the Federal Register on January 9, 1997 (62 FR 1358). By petition filed on March 12, 1997, the American Trails Association, Inc. (ATA) late-filed a request for issuance of a notice of interim trail use/rail banking pursuant to the National Trails System Act, 16 U.S.C. 1247(d), for the right-of-way involved in this proceeding. On April 1, 1997, a notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for ATA to negotiate an interim trail use/rail banking agreement with SKO for the 9.2-mile line of railroad. On March 23, 1998, ATA notified the board that an interim trail use/rail banking agreement had been timely reached.

By decision served on February 7, 1997, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and was made subject to the conditions that SKO shall: (a) consult with the Kansas Department of Health and Environment, Bureau of Water, prior to salvaging the right-of-way and (b) consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing any geodetic markers.

On October 24, 2007, ATA filed a request to terminate trail use over the right-of-way, pursuant to 49 CFR 1152.29(d)(2), and requested that the NITU be vacated, effective November 5, 2007. By decision served on November 13, 2007, the Board reopened the proceeding and granted ATA's request for vacation of the NITU. The Board indicated that SKO may fully abandon the line segments after compliance with the previously imposed environmental conditions.

On December 31, 2007, Sunflower Recreational Trails, Inc. (SRT) filed a request for issuance of a NITU for the entire line. SRT has submitted a statement of willingness 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 the payment of any and all taxes that may be

levied or assessed against, the right-of-way, as required at 49 CFR 1152.29. In a letter filed on January 10, 2008, SKO states that it has not consummated the abandonment and is willing to negotiate for trail use.

Because SRT's request complies with the requirements of 49 CFR 1152.29 and SKO 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, SKO may fully abandon the line subject to compliance with the previously imposed environment conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purpose is subject to possible future restoration for railroad purposes.

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 request for a NITU under 16 U.S.C. 1247(d) is granted.
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 obligation of the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminal 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 July 22, 2008, interim trail use may be implemented. If no agreement is reached by that time SKO may fully abandon the line, provided that the previously imposed environmental conditions have been satisfied.

7. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary