

29101
EB

SERVICE DATE - JULY 7, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-441 (Sub-No. 2X)

SWKR OPERATING CO.--ABANDONMENT EXEMPTION--
IN COCHISE COUNTY, AZ

Decided: June 26, 1998

This decision denies an extension request related to the Board's December 2, 1997 decision in this matter and grants a request for issuance of a notice of interim trail use.

BACKGROUND

By decision served February 14, 1997 (62 FR 7086), the Board permitted SWKR Operating Co. (SWKR) to abandon a 41.5-mile line of railroad, running between Charleston and Paul Spur, AZ. Chemical Lime Company (CLC), a shipper on the line, filed an offer of financial assistance and a request that the Board set terms and conditions for subsidy and purchase of the line under 49 U.S.C. 10905. CLC rejected the terms set by the Board and, in a decision served December 2, 1997, the abandonment was made effective on that date.

By letter filed March 30, 1998, Representative Gail Griffin of the Arizona House of Representatives requests a 90-day "extension" of the December 2 decision to allow the Arizona Department of Transportation time to hire a consultant to conduct a feasibility study on the practicable uses, economic benefits, and potential purchase of the line. SWKR filed a reply on April 13, 1998. Also on April 13, 1998, San Pedro Trails, Inc. (SPT) filed a request for issuance of a notice of interim trail use (NITU) for 180 days under the National Trails System Act, 16 U.S.C. 1247(d).

DISCUSSION AND CONCLUSIONS

The extension request. Because the abandonment authorization is now effective and the proceeding is administratively final, the available relief is a petition to reopen the proceeding under 49 CFR 1115.4 or a petition to revoke the exemption under 49 U.S.C. 10502(d). We must therefore review Representative Griffin's request in light of the standards for granting relief by the means available. The Board may reopen an administratively final decision when the petitioner submits new evidence, shows that the Board has committed material error or demonstrates that new circumstances have arisen that warrant a different result. The Board may revoke an exemption when a petitioner shows that the application of the statutory provision from which an exemption has been granted is necessary to carry out the transportation policy set out in the ICC Termination Act of 1995. The pleading submitted by the Representative does not afford the Board a basis for granting

relief by either provision.¹

Trail use request. Along with its trail use request, SPT submitted a statement indicating its willingness to assume full responsibility for management of, and liability for payment of taxes for, the right-of-way, as required by 49 CFR 1152.29, and acknowledges that the use of the right-of-way as a trail is subject to future reactivation for rail service. By letter filed April 20, 1998, SWKR states that the Charleston-to-Paul Spur track has not yet been abandoned, that the railroad is willing to negotiate an agreement to rail bank the right-of-way, and that it supports the request of SPT for issuance of a NITU.

Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way² and the carrier is willing to enter into negotiations. Since SWKR has not consummated the abandonment and is willing to negotiate for trail use, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate a trail use agreement during the 180-day period prescribed below.³ If the parties reach a mutually acceptable final agreement, further Board approval will not be necessary. If no agreement is reached within 180 days, SWKR may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to 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. The request for a 90-day extension of the December 2, 1997 decision is denied.
2. This proceeding is reopened.
3. Upon reconsideration, the decision served and published on February 14, 1997, exempting the abandonment of the above-described line, is modified to the extent necessary to

¹ Because the decision went into effect before the Representative filed her petition, the Board would not be able to stay the decision.

² See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--in Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

³ Should the parties reach an agreement for trail use, the corridor will be rail banked. As such, should a need for rail service develop in the future, rail service can be restored over the right-of-way.

implement interim trail use/rail banking as set forth below for a period of 180 days from the service date of this decision.

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, 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 of 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 specific date.

7. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, SWKR may fully abandon the line, provided that the historic preservation and labor protective conditions imposed in the February 14 decision are met.

8. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary