

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-471 (Sub-No. 4X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY—  
ABANDONMENT EXEMPTION—IN CRAWFORD, WILSON, ELK AND GREENWOOD  
COUNTIES, KS AND OSAGE AND TULSA COUNTIES, OK

Decided: April 23, 2002

South Kansas and Oklahoma Railroad Company (SKO) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon: (1) a 35-mile line of railroad between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall, in Osage and Tulsa Counties, OK; (2) a 6-mile line of railroad between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee, in Crawford County, KS; and (3) a 23.5-mile line of railroad between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk, and Greenwood Counties, KS.<sup>1</sup> On November 29, 2000, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for SKO to negotiate a trail use agreement with: (1) the City of Pittsburg for the 6-mile portion of the right-of-way between milepost 359.0 near Pittsburg and milepost 365.0 near Cherokee; and (2) the Trust for Public Land (TPL) for the 35-mile portion of the right-of-way between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall. By decisions served June 1, 2001, and December 31, 2001, the negotiation period under the NITU was extended at the request of TPL to May 24, 2002 for the portion of the right-of-way between milepost 157.10 and milepost 188.0.<sup>2</sup>

In a joint motion filed April 3, 2002, TPL and Tulsa County (County) request substitution of the County as the new interim trail user and the termination of TPL as the interim trail user for the portion of the right-of-way between milepost 157.10 and 163.21. The parties state that, on March 18, 2002, TPL and SKO consummated a trail use/rail banking agreement for that portion of the right-of-way, and that, on the same date, TPL and the County entered into an agreement,

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<sup>1</sup> Notice of the exemption was served and published in the Federal Register on October 6, 2000 (65 FR 59891-92).

<sup>2</sup> The June 1, 2001 decision also stated that, on March 15, 2001, TPL and SKO consummated a trail use/rail banking agreement for the portion of the right-of-way between milepost 153.0 and milepost 157.10. By decision served October 10, 2001, the proceeding was reopened and the City of Tulsa was authorized to replace TPL as the new trail user over the segment between milepost 153.0 and milepost 157.10.

whereby TPL conveyed its interest between milepost 157.10 and 163.21 to the County, which will construct and maintain a scenic, recreational trail.<sup>3</sup>

The County has submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29 and has acknowledged that the use of the right-of-way as a trail is subject to possible future reconstruction and reactivation of the right-of-way for rail service. The parties' submission meets the requirements of 49 CFR 1152.29(f). Accordingly, the requested relief will be granted.

This decision does not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on November 29, 2000, is vacated for the portion of the right-of-way between milepost 157.10 and milepost 163.21, and the County is authorized to replace TPL as the new trail user over that portion of the right-of-way, effective on the service date of this decision.
3. 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 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 new trail user's continuing to meet the financial obligations for the right-of-way.
5. If the new trail 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.

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<sup>3</sup> TPL will continue to negotiate with SKO with respect to the portion of the right-of-way between milepost 163.21 and milepost 188.0.

6. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary