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SERVICE DATE - APRIL 1, 1997

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: March 27, 1997

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 268.4, 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). The exemption became effective on February 8, 1997.

By decision served February 7, 1997, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption 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 geodetic markers.

On March 12, 1997, the American Trails Association, Inc. (ATA) filed a request for a notice of interim trail use/rail banking (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29. ATA submitted a statement indicating its willingness to assume full financial responsibility for management of, and liability for payment of taxes for, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service.

In a letter filed March 25, 1997, SKO confirmed that it had not fully consummated the abandonment of the line and agreed to negotiate interim trail use.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way<sup>1</sup> and the carrier is willing to enter into negotiations. Inasmuch as SKO has not consummated the abandonment and has indicated a willingness to negotiate, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period following service of this decision. If the parties reach a mutually acceptable final agreement, further approval by the Board is unnecessary. If no agreement is reached within 180

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<sup>1</sup> See Rail Abandonment--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).

days, SKO 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.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on January 9, 1997, exempting the abandonment of the line described above, as modified by decision served February 7, 1997, is further modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the service date of this decision.
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 obligations for the right-of-way.
5. 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.
6. 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 the 180th day, SKO may fully abandon the line.
7. This decision is effective on the service date.

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

Vernon A. Williams  
Secretary