

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-103 (Sub-No. 11X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN HEMPSTEAD, LAFAYETTE AND COLUMBIA COUNTIES, AR

Decided: June 30, 1997

The Kansas City Southern Railway Company (KCS) filed a notice of exemption under 49 CFR 1152 Subpart F--*Exempt Abandonments* to abandon a 42.78-mile line of railroad between milepost 4.00 at or near Hope, and milepost 46.78 at the Arkansas-Louisiana State Line, in Hempstead, Lafayette and Columbia Counties, AR. Notice of the exemption was served and published in the *Federal Register* on June 4, 1997 (62 FR 30667). The exemption is scheduled to become effective on July 4, 1997.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA) in this proceeding, served June 18, 1997. In the EA, SEA indicates that the National Geodetic Survey (NGS) has identified 78 geodetic station markers that may be affected by the abandonment. NGS states that it must be notified 90 days in advance of any activities that would disturb or destroy the 78 geodetic markers identified by NGS. Therefore, SEA recommends that a condition be imposed requiring SKO to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying the 78 geodetic markers.

On June 16, 1997, National Salvage & Service Corp. (Commenter) filed a request for issuance of a notice of interim trail use/rail banking (NITU) for the entire line, under the National Trails System Act 16 U.S.C. 1247(d) (Trails Act), to negotiate with KCS for acquisition of the right-of-way for a trail. Commenter submitted a statement of willingness to assume responsibility for management of, and liability and payment of taxes for, the right-of-way, as required at 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.

By facsimile dated June 27, 1997, KCS indicated its willingness to negotiate with Commenter for trail use. In light of this and KCS's willingness to negotiate for interim trail use, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. The negotiating period commences with the effective date of the exemption and may be extended on request if KCS remains willing to negotiate. Qualified entities other than Commenter may file requests for interim trail use/rail banking so long as the abandonment has not been consummated and KCS is willing to negotiate with them. If the parties reach a mutually acceptable final agreement, no further action by the Board is necessary. If no agreement is reached within 180 days, KCS may fully abandon the line, provided that the environmental condition imposed in this decision is met. *See* 49 CFR 1152.29(d)(2). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This decision 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 published in the *Federal Register* on June 4, 1997, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for 180 days commencing July 4, 1997, the effective date of the exemption (until December 31, 1997), and is subject to the condition that KCS consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying the 78 geodetic station markers.

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 specified date.

6. If any agreement for interim trail use/rail banking is reached by December 31, 1997, interim trail use may be implemented. If no agreement is reached by that time, KCS may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary