

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-103 (Sub-No. 12X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY--ABANDONMENT  
EXEMPTION--IN WEBSTER, BIENVILLE, NATCHITOCHEs AND WINN PARISHES, LA

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 61.62-mile line of railroad between milepost 83.02 at or near Sibley, and milepost 144.64 at or near Carla, in Webster, Bienville, Natchitoches and Winn Parishes, LA. Notice of the exemption was served and published in the *Federal Register* on June 6, 1997 (62 FR 31188-89). The exemption is scheduled to become effective on July 6, 1997.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA), served June 18, 1997, indicating that the right-of-way may be suitable for other public use following abandonment in this proceeding. In the EA, SEA also indicates that the National Geodetic Survey (NGS) has identified 58 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 58 geodetic markers identified by NGS. Therefore, SEA recommends that a condition be imposed requiring KCS to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying the 58 geodetic station markers.

On June 16, 1997, National Salvage & Service Corp. (Commenter) and the City of Winnfield and Winn Parish (City), a political subdivisions of the State of Louisiana, each 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 and the City have submitted statements 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. The City also requests imposition of a 180-day public use condition under 49 U.S.C. 10905. The City states that the rail line crosses a national scenic bayou within the U.S. Kisatchie National Forest, that links the City of Winnfield with the national forest, and will provide a very scenic trail for recreational use through the entire Winn District of the Kisatchie National Forest. The City requests that KCS be barred from removing or destroying and trail-related structures, such as bridges, trestles, culverts and tunnels for a 180-day period from the effective date of the abandonment exemption.

By facsimile dated June 27, 1997, KCS indicated its willingness to negotiate with Commenter for interim trail use. However, KCS states that it is not willing to negotiate with the City for interim trail use. In light of KCS's willingness to negotiate with Commenter, 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 conditions imposed in this decision are met. *See* 49 CFR 1152.29(d)(2). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the National Trails System Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. *See Rail Abandonments--Use of Rights-of-Way As Trails*, 2 I.C.C.2d 591, 609. To justify a public use condition, a party must set forth: (1) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. *See* 49 CFR 1152.28(a)(2). The City has satisfied these requirements

and therefore a 180-day public use condition will be imposed to control disposal of rail properties being abandoned. KCS will be permitted to remove the tracks, ties, and signal equipment on the right-of-way, but will be required to leave bridges, culverts, and tunnels intact during that period. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found appropriate for public purposes.

When the need for interim trail use/rail banking and public use conditions is shown, it is our policy to impose both conditions concurrently, subject to the execution of a trail use agreement.

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. The City's request for issuance of a notice of interim trail use/rail banking is denied.
3. Upon reconsideration, the notice of exemption served and published in the *Federal Register* on June 6, 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, subject to the conditions that KCS shall: (a) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying the 58 geodetic station markers; and (b) keep intact the right-of-way underlying the track, including bridges, culverts, and similar structures for a period of 180 days (until January 2, 1998), to enable any state or local government agency, or other interested persons to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
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, 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.
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 for 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 specified date.
7. If any agreement for interim trail use/rail banking is reached by January 2, 1998, interim trail use may be implemented. If no agreement is reached by that time, KCS may fully abandon the line.
8. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary