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SERVICE DATE – JANUARY 24, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-471 (Sub-No. 3X)

SOUTH KANSAS AND OKLAHOMA RAILROAD, INC.—ABANONMENT
EXEMPTION—IN CHEROKEE AND ALLEN COUNTIES, KS

Decided: January 23, 2008

South Kansas and Oklahoma Railroad, Inc. (SKO) filed a notice of exemption under 49 CFR 1152 Subpart F —Exempt Abandonments to abandon: (1) an 8-mile line of railroad between milepost 109.0 at Iola and milepost 117.0 at Humboldt, in Allen County, KS; and (2) a 5-mile line of railroad between milepost 382.0 at Sherwin and milepost 387.0 at Faulkner, in Cherokee County, KS. Notice of exemption was served and published in the Federal Register on December 4, 2000 (65 FR 75817). By petition filed on January 10, 2001, American Trails Association, Inc. (ATA) late-filed a request for issuance of a notice of interim trail use/rail banking (NITU) pursuant to the National Trails System Act, 16 U.S.C. 1247(d), for the right-of-way involved in this proceeding. On March 13, 2001, a NITU was served authorizing a 180-day period for ATA to negotiate an interim trail use/rail banking agreement with SKO for the entire line. On March 20, 2001, ATA notified the Board that an interim trail use/rail banking agreement had been timely reached.

By decision served January 2, 2001, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to the condition that SKO not conduct salvage activities or dispose of the line until the completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531.

On October 24, 2007, ATA filed a request to terminate trail use of the right-of-way between milepost 110.5 at Iola and milepost 117.0 at Humboldt, in Allen County, and to terminate trail use of the 5-mile line in Cherokee County.¹ ATA requested that the NITU be vacated as of November 5, 2007. By decision served on November 13, 2007, the Board granted ATA's request for vacation of the NITU. The Board noted that SKO may fully abandon those portions of the line after compliance with the environmental condition imposed in the decision served January 2, 2001.

¹ By decision served November 3, 2006, in this proceeding, the City of Iola was substituted for ATA as the interim trail manager for that part of the line between milepost 109.0 and milepost 110.5.

On December 31, 2007, Sunflower Recreational Trails, Inc. (SRT) filed a request for issuance of a NITU for the right-of-way between milepost 109.0 at Iola and milepost 117.0 at Humboldt, in Allen County, KS. SRT has submitted a statement of willingness to assume financial responsibility for the 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, as required at 49 CFR 1152.29. In a letter filed on January 10, 2008, SKO states that it has not consummated the abandonment and is willing to negotiate for trail use regarding the portion of the line between milepost 110.5 and milepost 117.0. SKO notes that the segment of the line between milepost 109.0 and milepost 110.5 is currently subject to an interim trail use/rail banking agreement with the City of Iola.

Because SRT's request complies with the requirements of 49 CFR 1152.29 and SKO is willing to enter into negotiations for the portion of the line between milepost 110.5 and milepost 117.0, a NITU will be issued for that portion. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, SKO may fully abandon this segment of rail line, subject to the compliance with the environmental condition imposed in the January 2, 2001 decision. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future restoration for railroad purposes.

Under the circumstances, SKO may fully abandon the remaining 5-mile segment between milepost 382.0 at Sherwin and milepost 387.0 at Faulkner, in Cherokee County, KS, after compliance with the environmental condition imposed in the decision served January 2, 2001.

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

It is ordered:

1. This proceeding is reopened.
2. The request for a NITU under 16 U.S.C. 1247(d), as to the line segment between milepost 110.5 and milepost 117.0 is granted.
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 new 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.

6. If an agreement for interim trail use/rail banking is reached by July 22, 2008, interim trail use may be implemented. If no agreement is reached by that time, K&O may fully abandon that portion of the line provided that the environmental condition imposed in the decision served January 2, 2001 decision is met.

7. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary