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SERVICE DATE - NOVEMBER 21, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-441 (Sub-No. 1X)<sup>1</sup>

SWKR OPERATING CO.–ABANDONMENT EXEMPTION–IN  
COCHISE COUNTY, AZ

STB Docket No. AB-441 (Sub-No. 2X)

SWKR OPERATING CO.–ABANDONMENT EXEMPTION–IN  
COCHISE COUNTY, AZ

Decided: November 20, 2003

By decision served October 12, 1995, in Docket No. AB-441 (Sub-No. 1X), the Interstate Commerce Commission (ICC) granted SWKR Operating Co. (SWKR), an exemption under former 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 (now 49 U.S.C. 10903) to abandon 17.26 miles of rail line in Cochise County, AZ, as follows: (1) the Bisbee Branch between milepost 1085.0 at Bisbee Jct. and milepost 1090.6 at Bisbee; and (2) a segment of its Douglas Branch between milepost N 1097.30 near Paul Spur and the end of the line at milepost N 1107.96 near Douglas, including a 1-mile line from milepost 1107 in Douglas to the international border with Mexico at Agua Prieta. Notice of the exemption was published in the Federal Register on October 12, 1995 (60 FR 53198). The exemption was made subject to labor protective, environmental, and historic preservation conditions, and it became effective on November 11, 1995. On August 26, 1996, a decision and notice of interim trail use or abandonment (NITU) was served which reopened the proceeding to implement interim trail use/rail banking under 49 CFR 1152.29 and provided a 180-day period for SWKR to negotiate an agreement with San Pedro Trails, Inc. (SP Trails). In a letter filed on February 24, 1997, SP Trails notified the Board that an interim trail use/rail banking agreement had been timely reached.

On August 27, 1999, SP Trails filed a notice of intent to terminate trail use for that portion of the right-of-way underlying a 1.46-mile segment of the line between milepost N 1106.5 and the end of the line at milepost N 1107.96. SP Trails requested that the NITU served August 26, 1996, insofar as it related to the described line segment, be vacated effective September 1, 1999. By decision and notice served October 12, 1999: (1) the NITU was vacated with respect to the line segment between milepost N 1106.5 and milepost N 1107.96; (2) SP

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<sup>1</sup> These proceedings are not consolidated. A single decision is being issued for administrative convenience.

Trails remained as the trail user for the remaining line segments; and (3) SWKR was authorized to abandon the segment for which the NITU had been vacated.

By decision served February 14, 1997, in STB Docket No. AB-441 (Sub-No. 2X), the Board granted SWKR an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon 41.5 miles of railroad between milepost 1055.8 near Charleston and the end of the line at milepost 1097.3 near Paul Spur, in Cochise County, AZ. Notice of the exemption was published in the Federal Register on February 14, 1997 (62 FR 7086). The exemption was made subject to public use, trail use/rail banking, historic preservation, and labor protective conditions. The exemption was scheduled to become effective on March 16, 1997. However, a shipper on the line filed an offer of financial assistance and a request that the Board set terms and conditions for subsidy and purchase of the line under 49 U.S.C. 10905. The shipper rejected the terms set by the Board and, in a decision served December 2, 1997, the abandonment was made effective on that date, subject to historic preservation and standard labor protective conditions.

By decision and NITU served on July 7, 1998, the Board, inter alia, modified the February 14, 1997 decision to allow SP Trails to negotiate an interim trail use/rail banking agreement with SWKR for the right-of-way, for 180 days, until January 3, 1999. By letter filed August 17, 1998, SWKR notified the Board that it and SP Trails had negotiated an agreement to rail bank the right-of-way and that, pursuant to the agreement's terms, SP Trails had assumed responsibility for management of the right-of-way and the tax and tort liability associated therewith.

In a joint notice filed on October 31, 2003, SP Trails and Cochise Trails, LLC (Cochise) request substitution of Cochise as the new interim trail user, and the termination of SP Trails as the interim trail user for the right-of-way, in both proceedings, effective October 31, 2003, pursuant to 49 CFR 1152.29(f).<sup>2</sup>

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

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<sup>2</sup> On October 24, 2003, a verified notice of exemption was filed in STB Finance Docket No. 34430, San Pedro Railroad Operating Company, LLC—Acquisition and Operation Exemption—SWKR Operating Co., Inc., wherein San Pedro Railroad Operating Company, LLC (SPROC) seeks to acquire all of SWKR's assets, including the rights to reinstitute service on the rail banked lines in both proceedings. SP Trails and Cochise state in their substitution request that both SWKR and SPROC support the request.

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

It is ordered:

1. These proceedings are reopened.
2. The NITUs served on August 26, 1996 in Docket No. AB-441 (Sub-No. 1X), and on July 7, 1998 in STB Docket No. AB-441 (Sub-No. 2X), are vacated.
3. A replacement NITU is issued in both proceedings designating Cochise as the new trail user effective on the service date of this decision and notice, subject to: (1) the remaining environmental conditions imposed in the decision served October 12, 1995 in Docket No. AB-441 (Sub-No. 1X); and (2) the historic preservation condition imposed in the decision and notice served February 14, 1997 in STB Docket No. AB-441 (Sub-No. 2X).
4. 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 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 new user continuing to meet the financial obligations for the right-of-way.
6. 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.
7. This decision and notice is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary