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SERVICE DATE – NOVEMBER 19, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-341 (Sub-No. 1X)

SOUTHWESTERN RAILROAD COMPANY, INC.–ABANDONMENT EXEMPTION–IN
ELLIS COUNTY, OK, AND LIPSCOMB, OCHILTREE, AND HANSFORD COUNTIES, TX

Decided: November 18, 2008

By decision and notice of interim trail use or abandonment (NITU) served on November 20, 2007, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Southwestern Railroad Company, Inc. (SWRR), of 85.3 miles of railroad extending from milepost 0.10 at Shattuck, OK, to milepost 85.4 at Spearman, TX, in Ellis County, OK, and Lipscomb, Ochiltree, and Hansford Counties, TX, subject to public use, trail use and standard employee protective conditions. The decision authorized the Top of Texas Rural Rail Transportation District (TTRRTD) to negotiate with SWRR for public use or interim trail use/rail banking for the line. The negotiating period under the NITU expired on May 18, 2008.¹

On November 14, 2008, TTRRTD filed a request to extend the trail use negotiating period for 180 days, until May 13, 2009. TTRRTD states that, because of extenuating circumstances beyond the parties' control, the sales agreement could not be consummated at an earlier date. TTRRTD indicates that the parties are intent upon completing the transaction in the near future. TTRRTD also states that SWRR consents to the request for an extension.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d).² Accordingly, the NITU negotiating period will be extended until May 13, 2009.

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

¹ The public use condition also expired and cannot be extended.

² See Rail Abandonments–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

It is ordered:

1. TTRRTD's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until May 13, 2009.
3. This decision is effective on the date of service.

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

Anne K. Quinlan
Acting Secretary