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SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-103 (Sub-No. 9X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY--ABANDONMENT EXEMPTION--
-IN JASPER COUNTY, MO AND CHEROKEE COUNTY, KS

Decided: June 12, 1997

The Kansas City Southern Railway Company (KCS) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon two of its branch lines: (1) the Baxter Springs Branch from milepost 139.01 L at the connection with the KCS mainline to the end of the line at milepost 148.51 L near Crestline, KS, a distance of 9.50 miles, in Jasper County, MO, and Cherokee County, KS; and (2) the Waco Branch from milepost W 139.80 at the connection with the KCS main line to the end of the line at milepost W 142.9, in Waco, MO, a distance of 2.69 miles, in Jasper County, MO. The Rails to Trails Conservancy (RTC) also sought issuance of a notice of interim trail use/rail banking (NITU) pursuant to 16 U.S.C. 1247(d). A notice of exemption and NITU was served and published in the *Federal Register* [59 FR 66048-49] on December 22, 1994.¹

On June 8, 1995, counsel for RTC and Ozark Regional Land Trust (ORLT) filed a statement of willingness to assume financial responsibility on behalf of ORLT because RTC was negotiating the assignment of its rights under the rail banking agreement to ORLT.

In a joint motion filed May 19, 1997, RTC and Ozark Regional Land Trust (ORLT) request substitution of ORLT as interim trail manager/rail banker in this proceeding. RTC states that, on March 31, 1997, it entered into an agreement with ORLT, whereby the former agreed to deed the corridor to the latter, with ORLT agreeing to assume full responsibility for management of, and liability and payment of taxes for, the right-of-way, as required under 49 CFR 1152.29. RTC states that it wishes to terminate its trail use of the corridor and ORLT wishes to substitute as the interim trail manager. By letter dated June 9, 1997, KCS consents to ORLT's replacing RTC as the interim trail manager/rail banker.

Petitioners have submitted a copy of the extant NITU and a statement of willingness to assume financial responsibility by the new trail user. The parties have also indicated that responsibility for the right-of-way is to transfer to ORLT as of the date the new NITU is issued. Petitioners' submission meets the requirements of 49 CFR 1152.29(f), and the requested relief will be granted.

This action 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 NITU served December 22, 1994, is vacated.
3. A replacement NITU applicable to Ozark Regional Land Trust as interim trail user is issued, effective on the service date of this decision.

¹ KCS and RTC entered into an interim trail use/rail banking agreement for the entire corridor, including bridges and ballast, on March 29, 1994.

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 is effective on its service date.

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

Vernon A. Williams
Secretary