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SERVICE DATE – LATE RELEASE DECEMBER 29, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-853 (Sub-No. 1X)

KANSAS & OKLAHOMA RAILROAD, INC.—ABANDONMENT EXEMPTION—IN
HODGEMAN, COMANCHE, KIOWA, AND PRATT COUNTIES, KS

Decided: December 29, 2008

Kansas & Oklahoma Railroad, Inc. (K&O) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon two rail line segments as follows: (1) a 10.7-mile rail line between milepost 36.3 at Hanston, and milepost 47.0 at Jetmore, in Hodgeman County, KS; and (2) a 46.8-mile rail line between milepost 589.2 at Coats, and milepost 636.0 at Protection, in Comanche, Kiowa, and Pratt Counties, KS. Notice of the exemption was served and published in the Federal Register on August 27, 2003 (68 FR 51637). The exemption was scheduled to become effective on September 26, 2003.

By decision served on September 29, 2003, an environmental condition was imposed in this proceeding requiring K&O to consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers in order to plan for the markers' relocation. That condition remains in effect.

On November 25, 2003, a decision and notice of interim trail use or abandonment (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), was served reopening the proceeding and establishing a 180-day period for American Trails Association, Inc. (ATA) to negotiate an interim trail use/rail banking agreement with K&O for acquisition of the right-of-way. On October 24, 2007, ATA filed a notice of intent to terminate trail use over the above line segments, pursuant to 49 CFR 1152.29(d)(2), and requested that the NITU be vacated, effective November 5, 2007. By decision served on November 13, 2007, the Board reopened the proceeding and granted ATA's request for vacation of the NITU. The Board indicated that K&O may fully abandon the line segments subject to compliance with the previously imposed environmental condition.

By decision and NITU served on March 7, 2008, the proceeding was reopened and a 180-day period was established for Hodgeman County Economic Development (the County) to negotiate with K&O for the 10.7-mile portion of the right-of-way between milepost 36.3 and milepost 47.0. That negotiating period expired on September 3, 2008.

On December 16, 2008, Sunflower Recreational Trails, Inc. (SRT) filed a request for issuance of a NITU for the 10.7-mile portion of the right-of-way between milepost 36.3 and milepost 47.0.¹ SRT states that the County is no longer interested in negotiating for rail banking and interim trail use of the right-of-way and SRT would like to negotiate in the County's place. 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 December 19, 2008, K&O states that it has not consummated the abandonment of the line and that it is willing to negotiate for trail use with SRT.

Because SRT's request complies with the requirements of 49 CFR 1152.29 and K&O is willing to negotiate for trail use, a new NITU will be issued for that portion of the right-of-way between milepost 36.3 at Hanston, and milepost 47.0 at Jetmore, in Hodgeman County. 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, K&O may fully abandon the line subject to compliance with the previously imposed environmental condition. 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.

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 on March 7, 2008 is vacated and a new NITU designating SRT as the trail proponent is granted, effective on the service date of this decision and notice.
3. The negotiating period under the NITU will run for a period of 180 days commencing from the service date of this decision and notice (until June 27, 2009).
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 of the right-of-way.

¹ A NITU was issued on February 4, 2008, establishing a 180-day period for SRT to negotiate with K&O for the 46.8-mile segment between milepost 589.2 at Coats, and milepost 636.0 at Protection. That negotiating period expired on August 2, 2008.

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 an agreement for interim trail use/rail banking is reached by June 27, 2009, interim trail use may be implemented. If no agreement is reached by that time, K&O may fully abandon the line, subject to the previously imposed environmental condition.

8. This decision and notice is effective on its service date.

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

Anne K. Quinlan
Acting Secretary