

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-471 (Sub-No. 1X)

SOUTH KANSAS AND OKLAHOMA RAILROAD, INC.--ABANDONMENT
EXEMPTION--IN NEOSHO AND WILSON COUNTIES, KS

Decided: June 18, 1997

South Kansas and Oklahoma Railroad, Inc. (SKO) filed a notice of exemption under 49 CFR 1152 Subpart F--*Exempt Abandonments* to abandon a 19-mile portion of its line of railroad between milepost 130.0, near Chanute, and milepost 149.0, near Fredonia, in Neosho and Wilson Counties, KS. The notice was served and published in the *Federal Register* on May 23, 1997 (62 FR 28533-34). The exemption is scheduled to become effective on June 22, 1997.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA) in this proceeding, served June 3, 1997. In the EA, SEA indicates that the National Geodetic Survey (NGS) has identified 14 geodetic station markers that may be affected by the abandonment. NGS states that it must be notified 90 days in advance of any activities that would disturb or destroy the 14 markers identified by NGS. Therefore, SEA recommends that a condition be imposed requiring SKO to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying the 14 geodetic markers.

SEA also indicates that the Kansas Department of Health and Environment (KDHE) has determined that the abandonment may affect water quality, particularly in areas where tracks are located near streams, flood plains, wetlands or other aquatic areas sensitive to pollution. Therefore, SEA recommends that SKO consult with the KDHE, Division of Environment, Bureau of Water, in Topeka, KS, prior to removing track materials on the line.

On June 4, 1997, the Kansas Horseman Foundation (KHF) and American Trails Association, Inc. (ATA) each late-filed requests for issuance of a notice of interim trail use/rail banking (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), to negotiate with SKO for acquisition of the right-of-way for a trail.¹ KHF and ATA have submitted statements of willingness to assume responsibility for management of, and liability and payment of taxes for, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service.

By letter filed June 9, 1997, SKO indicated its willingness to negotiate with KHF and ATA for trail use. In light of this and SKO's willingness to negotiate for interim trail use, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. The negotiating period commences with the effective date of the exemption and may be extended on request if SKO remains willing to negotiate. Qualified entities other than KHF and ATA may file requests for interim trail use/rail banking so long as the abandonment has not been consummated and SKO is willing to negotiate with them. If the parties reach a mutually acceptable final agreement, no further action by the Board is necessary. If no agreement is reached within 180 days, SKO may fully abandon the line, provided that the environmental conditions imposed in this decision are met. *See* 49 CFR 1152.29(d)(2). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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

¹ The May 23 notice provided that requests for trail use/rail banking had to be filed by June 2, 1997. The notice stated, however, that the Board would accept a late-filed trail use request as long as it retained jurisdiction to do so. Accordingly, because the abandonment has not been consummated, KHF's and ATA's requests will be considered.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption published in the *Federal Register* on May 23, 1997, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for 180 days commencing June 22, 1997, the effective date of the exemption (until December 19, 1997), and is subject to the conditions that SKO shall: (a) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying the 14 geodetic markers; and (b) consult with the KDHE, Division of Environment, Bureau of Water, in Topeka, KS, prior to removing materials on this line.
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 user's continuing to meet the financial obligations for the right-of-way.
5. 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.
6. If any agreement for interim trail use/rail banking is reached by December 19, 1997, interim trail use may be implemented. If no agreement is reached by that time, SKO may fully abandon the line.
7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary