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SERVICE DATE - OCTOBER 12, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-441 (Sub-No. 1X)

SWKR OPERATING CO., INC.--ABANDONMENT EXEMPTION--
IN COCHISE COUNTY, AZ

Decided: October 7, 1999

By decision served October 12, 1995,¹ the Interstate Commerce Commission (ICC)² granted SWKR Operating Co., Inc. (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. The exemption was made subject to labor protective, environmental, and historic preservation conditions,³ 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 the right-of-way for a 1.46-mile segment of the line between milepost N 1106.5 and the end of the line at milepost N 1107.96, pursuant to 49 CFR 1152.29(d)(2). SP Trails requests that the NITU, insofar as it relates to the above-described line segment, be vacated effective September 1, 1999.

¹ Notice of the exemption was published in the Federal Register also on October 12, 1995 (60 FR 53198).

² The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the ICC and transferred certain functions and proceedings to the Surface Transportation Board.

³ In a decision served December 22, 1995, the proceeding was reopened and the section 106 condition, imposed under the National Historic Preservation Act, 16 U.S.C. 470f, was removed after SWKR met the requirements of the mitigation agreement it reached with the Arizona State Historic Preservation Office.

SP Trails has complied with the requirements of 49 CFR 1152.29(d)(2) regarding a request to vacate a portion of the line. Thus, SWKR may fully abandon the line between milepost N 1106.5 and milepost N 1107.96.

This decision will significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served August 26, 1996, is vacated with respect to the line segment between milepost N 1106.5 and milepost N 1107.96, and SP Trails will remain as the trail user for the remaining line segments. SWKR may fully abandon the segment for which the NITU has been vacated.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary