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SERVICE DATE – MAY 11, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-3 (Sub-No. 104X)

MISSOURI PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–IN
MUSKOGEE, MCINTOSH AND HASKELL COUNTIES, OK

Decided: May 11, 2009

By decision and notice of interim trail use or abandonment (NITU) served on January 6, 1993, the Board authorized a 180-day period for Missouri Pacific Railroad Company (MP), the Muskogee City-County Port Authority (the Port) and Indian Nations Recreation Trail (INRT) to negotiate an interim trail use/rail banking agreement for a 43.0-mile rail line extending from milepost 93.50, at or near Shopton, to milepost 50.50, near Kerr McGee, in Muskogee, McIntosh, and Haskell Counties, OK. MP, the Port and INRT then reached an agreement for rail banking and interim trail use.

On April 10, 2009, the Port filed a notice of exemption under 49 CFR 1150.31 to operate the 4.7-mile segment of the line that extends from milepost 88.80, at or near Davis Field, to milepost 93.50, at or near Shopton, in Muskogee County, OK (Muskogee County Segment) in Muskogee City-County Port Authority–Operation Exemption–A Line of Railroad in Muskogee County, OK, STB Finance Docket No. 35240 (Port Operation). The exemption became effective on May 10, 2009.

The Port simultaneously has filed a petition to vacate the NITU as it pertains to the Muskogee County Segment pursuant to 49 CFR 1152.29(d)(3). The Port seeks to reinstate active rail service on the line in accordance with section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).

Under the Trails Act, interim trail use is subject to the future restoration of rail service over the right-of-way. Upon agreement following the issuance of a NITU, the abandoning carrier generally transfers the right-of-way to the trail user, but retains the right to reinstitute rail service. Thus, an interim trail use arrangement is subject to being cut off at any time. It is well settled that the abandoning carrier's right to cut off the interim trail use arrangement and to reinstitute rail service can be conveyed to a third party. See, e.g., Iowa Power–Const. Exempt.–Council Bluffs, IA, 8 I.C.C.2d 858 (1990); N&W–Aban. St. Mary's & Minister in Auglaize County, OH, 9 I.C.C.2d 1015 (1993).

MP and the Port have entered into an agreement whereby MP has conveyed its right to reinstitute rail service on the Muskogee County Segment of the line to the Port. The Port may

not operate a railroad over the right-of-way without first obtaining approval or an exemption. In this case, the Port properly sought an exemption in Port Operation.

Where an application to operate a rail line over the right-of-way is authorized under 49 U.S.C. 10901 and 49 CFR 1150 Subpart D, or exempted under 49 U.S.C. 10502, the Board will reopen the abandonment proceeding and vacate the NITU. 49 CFR 1152.29(d)(3). The Port has complied with the requirements of 49 CFR 1152.29(d)(3) regarding a request to vacate the NITU. Therefore, vacation of the NITU will be granted so that rail service can be restored on the Muskogee County Segment of the line.

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 notice of interim trail use issued on January 6, 1993, is partially vacated as to the Muskogee County Segment.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary