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SERVICE DATE - NOVEMBER 25, 1998

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB-381 (Sub-No. 1X)

T AND P RAILWAY--ABANDONMENT EXEMPTION--IN SHAWNEE,
JEFFERSON AND ATCHISON COUNTIES, KS

Decided: November 19, 1998

By letter filed October 23, 1998, counsel for the American Trails Association, Inc. (ATA), requests that the decision and notice of interim trail use or abandonment (NITU), served on April 4, 1994, in this proceeding, be vacated and that the Board enter a decision authorizing abandonment of the line.¹ Counsel asserts that uncertainty exists regarding ATA's statutory and regulatory obligations under the April 4 NITU because of the decision in Becker v. Surface Transp. Bd., 132 F.3d 60 (D.C. Cir. 1997) (Becker), which held that the former Interstate Commerce Commission (ICC) did not retain jurisdiction to issue the April 4 NITU under the National Trails System Act, 16 U.S.C. 1247(d). The court found that when the prior NITU issued by the ICC on May 26, 1993, expired on November 27, 1993, TAP consummated its abandonment of the line and, therefore, the ICC had lost jurisdiction by the time ATA filed its trail use request on March 2, 1994.

The court's decision in Becker voided the April 4 NITU issued to ATA because the court found that the ICC lacked jurisdiction to issue it. In order to clarify the administrative record and to show that ATA retains no statutory or regulatory obligations or interest in the right-of-way, the April 4, 1994 decision will be vacated. No further action is required to authorize TAP to abandon the line. The April 27, 1993 decision exempting TAP's proposed abandonment became effective when the trail use negotiation period ended on November 27, 1993. The court has found that TAP abandoned the line at that time.

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

¹ By decision served April 27, 1993, the ICC exempted T and P Railway's (TAP) proposed abandonment of its 41-mile rail line between Topeka (milepost 47 + 3,390 feet) and Parnell (milepost 6 + 3,182 feet), in Shawnee, Jefferson, and Atchison Counties, KS, subject to, among other things, a public use condition. By decisions served on May 26, 1993, and November 1, 1993, the ICC issued a NITU permitting, respectively, the Kansas Department of Wildlife and Parks and then the Kansas Department of Transportation to negotiate a trail use agreement. The trail use negotiation period ended on November 27, 1993, without an agreement having been reached.

It is ordered:

1. This proceeding is reopened.
2. The April 4, 1994 decision and notice of interim trail use or abandonment issued in this proceeding is vacated.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary