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SERVICE DATE – NOVEMBER 4, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-471 (Sub-No. 4X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY–
ABANDONMENT EXEMPTION–IN CRAWFORD, WILSON, ELK AND GREENWOOD
COUNTIES, KS, AND OSAGE AND TULSA COUNTIES, OK

Decided: November 3, 2004

South Kansas and Oklahoma Railroad Company (SKO) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon: (1) a 35-mile line of railroad between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall, in Osage and Tulsa Counties, OK; (2) a 6-mile line of railroad between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee, in Crawford County, KS; and (3) a 23.5-mile line of railroad between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk, and Greenwood Counties, KS.¹ On November 29, 2000, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for SKO to negotiate a trail use agreement with: (1) the City of Pittsburg for the 6-mile portion of the right-of-way between milepost 359.0 near Pittsburg and milepost 365.0 near Cherokee; and (2) the Trust for Public Land (TPL) for the 35-mile portion of the right-of-way between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall. SKO and TPL reached a trail use agreement as to the portion of the right-of-way between milepost 153.0 and milepost 157.10 and by decisions served on June 1, 2001, and December 31, 2001, the negotiation period was extended to May 24, 2002, at TPL's request for the portion of the right-of-way between milepost 157.10 and milepost 188.0.² TPL and SKO reached a trail use agreement as to the portion of the right-of-way between milepost 157.10 and milepost 163.21 and Tulsa County was subsequently authorized to replace TPL as the interim trail user for that portion of the right-of-way by decision served on April 24, 2002. On September 10, 2003, Land Legacy, Inc. (LLI) filed a petition requesting the Board to vacate the existing NITU and issue an appropriate replacement NITU substituting LLI as the interim trail manager for the portion of

¹ Notice of the exemption was served and published in the Federal Register on October 6, 2000 (65 FR 59891-92).

² The City of Tulsa was subsequently authorized to replace TPL as the trail user between milepost 153.05 and milepost 157.10.

the right-of-way between mileposts 163.21 and 188.0.³ By decision served on October 14, 2003, LLI was authorized as the trail manager for the portion of the right-of-way between milepost 163.21 and milepost 188.0.

In a joint motion filed on October 15, 2004, LLI and the Town of Skiatook (Skiatook) filed a petition requesting the Board to vacate the existing NITU and issue an appropriate replacement NITU substituting Skiatook as the interim trail manager for the portion of the right-of-way between mileposts 163.21 and 170.0.⁴ LLI states that, on October 13, 2004, it and Skiatook entered into an agreement whereby LLI conveyed its interest in that portion of the right-of-way between mileposts 163.21 and 170.0 located in Osage County, OK, to Skiatook, which will hold title and maintain the trail.

Skiatook submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that the use of the right-of-way as a trail is subject to possible future reconstruction and reactivation of the right-of-way for rail service. The parties' submission meets the requirements of 49 CFR 1152.29(f). Accordingly, the request will be granted.

This decision will not 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 October 14, 2003 is vacated for the portion of the right-of-way between milepost 163.21 and milepost 170.0.
3. A replacement NITU designating Skiatook as the new trail manager for the portion of the right-of-way between milepost 163.21 and milepost 170.0 is issued, effective on the service date of this decision.

³ LLI informed the Board that, on May 22, 2003, TPL and SKO consummated a trail use/rail banking agreement with regard to the portion of the right-of-way between milepost 163.21 and milepost 188.0.

⁴ LLI states that it will continue to assume financial responsibility as the interim trail user for the remainder of the line between milepost 170.0 and milepost 188.0.

4. The new trail user is required 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 new user continuing to meet the financial obligations for the right-of-way.

6. If the new trail user intends to terminate trail use, it must send the Board a copy of this NITU and request that trail use be vacated on a specified date.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary