

SERVICE DATE – JANUARY 24, 2008

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: January 23, 2008

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 Canute, and milepost 149.0, near Fredonia, in Neosho and Wilson Counties, KS. Notice of exemption was served and published in the Federal Register on May 23, 1997 (62 FR 28533). By petition filed 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 pursuant to the National Trails System Act, 16 U.S.C. 1247(d), for the right-of-way involved in this proceeding. On June 19, 1997, a notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for ATA and KHF to negotiate an interim trail use/rail banking agreement with SKO for the 19-mile line of railroad.<sup>1</sup> On March 30, 1998, ATA notified the Board that an interim trail use/rail banking agreement had been timely reached.

On October 24, 2007, ATA filed a request to terminate trail use for the right-of-way. ATA requested that the NITU be vacated as of November 5, 2007. By decision served on November 13, 2007, the Board granted ATA's request for vacation of the NITU. The Board noted that SKO may fully abandon the line, after compliance with the environmental conditions imposed in the June 19, 1977 decision.

On December 31, 2007, Sunflower Recreational Trails, Inc. (SRT) filed a request for issuance of a NITU for the entire line. SRT has submitted a statement of willingness to assume financial responsibility for the 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

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<sup>1</sup> The June 19, 1997 decision also imposed environmental conditions requiring SKO: (1) to consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying the 14 identified geodetic markers; and (2) consult with the Kansas Department of Health and Environment, Bureau of Water, in Topeka KS, prior to removing materials on this line.

levied or assessed against, the right-of-way, as required at 49 CFR 1152.29. In a letter filed on January 10, 2008, SKO states that it has not consummated the abandonment and is willing to negotiate for trail use.

Because SRT's request complies with the requirements of 49 CFR 1152.29 and SKO is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, SKO may fully abandon the line, subject to compliance with the environmental conditions imposed in the June 19, 1997 decision. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future restoration for railroad purposes.

This decision 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 request for a NITU under 16 U.S.C.1247(d) is granted.
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 new 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 an agreement for interim trail use/rail banking is reached by July 22, 2008, interim trail use may be implemented. If no agreement is reached by that time, SKO may fully abandon the line provided that the environmental conditions imposed in the June 19, 1977 decision are met.

7. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary