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SERVICE DATE - JULY 30, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-471 (Sub-No. 4X)¹

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

STB Docket No. AB-563 (Sub-No. 1X)

KANSAS EASTERN RAILROAD, INC.—ABANDONMENT EXEMPTION—
IN BUTLER AND GREENWOOD COUNTIES, KS

Decided: July 29, 2004

In STB Docket No. AB-471 (Sub-No. 4X), 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. Notice of the exemption was served and published in the Federal Register on October 6, 2000 (65 FR 59891-92). 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 157.10.² 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 that the Board vacate the existing NITU and issue an appropriate replacement NITU

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

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

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

On December 29, 2000, a NITU was served authorizing a 180-day period for SKO to negotiate a trail use agreement with the American Trails Association (ATA) for the 23.5-mile portion of the right-of-way between milepost 438.5 at Severy and milepost 415.0 at Fredonia. ATA subsequently reported, in January 2001, that it had reached a trail use agreement with SKO and had taken possession of the 23.5-mile portion of the right-of-way and had assumed responsibility for its maintenance.

In STB Docket No. AB-563 (Sub-No. 1X), the Kansas Eastern Railroad, Inc. (KER) filed a notice of exemption under 49 CFR Subpart F–Exempt Abandonments for KER to abandon a 44.5-mile line of railroad between milepost 438.5 at Severy, and milepost 483.0 near Augusta, in Butler and Greenwood Counties, KS. Notice of the exemption was served and published in the Federal Register on August 25, 1999 (64 FR 46471).⁴ On December 10, 1999, a NITU for the entire line pursuant to 49 CFR 1152.29, under the National Trails System Act, 16 U.S.C. 1247(d), was served, authorizing a 180-day period for KER to negotiate an agreement with Butler County (County) for portions of the right-of-way between milepost 438.5 and milepost 476.4, and between milepost 476.65 and milepost 483.0 in this proceeding.⁵ Subsequently, by decision served on July 5, 2000, the notice was modified to the extent necessary to allow ATA and KER to negotiate an agreement for trail use for the same portions of the right-of-way that the County had proposed to rail bank. By letter filed on July 7, 2000, KER and ATA notified the Board that they had reached an agreement for interim trail use. On September 14, 2001, ATA filed a notice of intent to terminate trail use for the right-of-way between milepost 471.0 near Leon and milepost 476.4 and between milepost 476.65 and milepost 483.0 near Augusta, a distance of 11.75 miles in Butler County, KS. By decision served

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 By decision served September 23, 1999, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to several environmental conditions and a section 106 historic preservation condition.

⁵ By letter filed May 2, 2000, KER notified the Board that it had consummated the abandonment of the right-of-way between milepost 476.4 and milepost 476.65 and that it had entered an agreement with the State of Kansas for the sale of that line segment, which was needed by the State for the reconstruction of a highway.

October 25, 2001, the proceeding was reopened and the NITU was vacated with respect to those line segments.⁶ On December 18, 2001, the County filed a request for the issuance of a NITU for the same portions of the right-of-way between milepost 471.0 and milepost 476.4 and between milepost 476.65 and milepost 483.0 for which ATA had terminated trail use. By decision served January 17, 2002, a NITU was issued, authorizing a 180-day period for SKO to negotiate an interim trail use agreement with the County for portions of the line between milepost 471.0 and milepost 476.4, and between milepost 476.65 and milepost 483.0.

On July 13, 2004, ATA filed a notice of intent to terminate trail use for the portion of the right-of-way between milepost 415.0 at Fredonia and milepost 438.5 at Severy, on the former line of SKO and between milepost 471.0 near Leon and milepost 438.5 at Severy, on the former line of KER, a total distance of 56.0 miles in Butler, Elk and Greenwood Counties, KS. ATA requests that the NITU be vacated with respect to the described line segments as of July 31, 2004.

ATA has complied with the requirements of 49 CFR 1152.29(d)(2) regarding its request to vacate the NITU. Thus, SKO may fully abandon the line between milepost 415.0 at Fredonia and milepost 438.5 at Severy, and KER may fully abandon the line between milepost 471.0 near Leon and milepost 438.5 at Severy, subject to any remaining environmental conditions that have been imposed in these proceedings.

This action 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 NITUs served July 5, 2000, and December 29, 2000, are vacated, effective July 31, 2004, with respect to the line segments between milepost 415.0 at Fredonia and milepost 438.5 at Severy, on the former line of SKO, and between milepost 471.0 near Leon and milepost 438.5 at Severy, on the former line of KER. SKO and KER may fully abandon the segments for which the NITUs have been vacated if the environmental conditions imposed in these proceedings have been met.

⁶ The October 25, 2001 decision noted that the line segment between milepost 438.5 and milepost 471.0 remained subject to trail use/rail banking.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary