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SERVICE DATE – FEBRUARY 24, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-471 (Sub-No. 1X)

SOUTH KANSAS AND OKLAHOMA RAILROAD, INC.—ABANDONMENT
EXEMPTION—IN NEOSHO AND WILSON COUNTIES, KS

Decided: February 23, 2009

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 the 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) (Trails Act), 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.¹ 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, 1997 decision.

On December 31, 2007, Sunflower Recreational Trails, Inc. (SRT) filed a request for issuance of a NITU for the entire line. On January 24, 2008, a NITU was served authorizing a 180-day period (until July 22, 2008) for SRT to negotiate an interim trail use/rail banking agreement with SKO for the entire line. At the request of SKO, the negotiation period under the NITU was further extended to January 18, 2009, by decision served October 2, 2008.

¹ The June 19, 1997 decision 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, Division of Environment, Bureau of Water, in Topeka, KS, prior to removing materials on this line.

On January 22, 2009, SRT filed a request to extend the NITU negotiating period for an additional 180 days. In a response filed on February 9, 2009, SKO states that it has not consummated the abandonment and is willing to continue trail use negotiations with SRT.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.² Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the negotiating period will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the negotiating period will be extended for 180 days from January 18, 2009 (until July 17, 2009).

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

It is ordered:

1. SRT's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to July 17, 2009.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).