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SERVICE DATE – FEBRUARY 24, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-471 (Sub-No. 3X)

SOUTH KANSAS AND OKLAHOMA RAILROAD, INC.—ABANDONMENT
EXEMPTION—IN CHEROKEE AND ALLEN 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: (1) an 8-mile line of railroad between milepost 109.0 at Iola and milepost 117.0 at Humboldt, in Allen County, KS; and (2) a 5-mile line of railroad between milepost 382.0 at Sherwin and milepost 387.0 at Faulkner, in Cherokee County, KS. Notice of the exemption was served and published in the Federal Register on December 4, 2000 (65 FR 75817). On January 10, 2001, American Trails Association, Inc. (ATA) requested Board issuance of a notice of interim rail use/rail banking (NITU) 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 March 13, 2001, a NITU was served authorizing a 180-day period for ATA to negotiate an interim trail use/rail banking agreement with SKO for the entire line. On March 20, 2001, ATA notified the Board that an interim rail use/rail banking agreement had been timely reached.

By decision served January 2, 2001, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to the condition that SKO not conduct salvage activities or dispose of the line until the completion of the section 7 process of the Endanger Species Act, 16 U.S.C. 1531.

On October 24, 2007, ATA filed a request to terminate trail use of the right-of-way between milepost 110.5 at Iola and milepost 117.0 at Humboldt, in Allen County, and to terminate trail use of the 5-mile line in Cherokee County.¹ 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 between milepost 110.5 at Iola and milepost 117.0 at Humboldt, and for the 5-mile right-of-way in Cherokee County. The Board noted that SKO may fully abandon those portions of the line after compliance with the environmental condition imposed in the decision served January 2, 2001.

¹ By decision served November 3, 2006, in this proceeding, the City of Iola was substituted for ATA as the interim trail manager for that part of the line between milepost 109.0 and milepost 110.5.

On December 31, 2007, Sunflower Recreational Trails, Inc. (SRT) filed a request for issuance of a NITU for the right-of-way between milepost 109.0 at Iola and milepost 117.0 at Humboldt, in Allen County, KS. In a response filed on January 10, 2008, SKO stated that it was willing to negotiate for trail use regarding the portion of the line between milepost 110.5 and milepost 117.0. SKO noted that the segment of the line between milepost 109.0 and milepost 110.5 was already subject to an interim trail use/rail banking agreement with the City of Iola. 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 as to the line segment between milepost 110.5 and milepost 117.0 until July 22, 2008.² By decision served on October 2, 2008, the NITU negotiating period was extended to January 18, 2009, for the right-of-way between milepost 110.5 and milepost 117.0 at the request of SKO.

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 negotiation 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.³ 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) for the portion of the right-of-way between milepost 110.5 and milepost 117.0.

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 for the portion of the right-of-way between milepost 110.5 and milepost 117.0 is extended to July 17, 2009.

² By letter filed on June 20, 2008, SKO informed the Board that it had consummated abandonment of the 5-mile line between Sherwin and Faulkner, KS, as of June 19, 2008.

³ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-158 (1987).

3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary