

SERVICE DATE - JULY 25, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-3 (Sub-No. 111X)

MISSOURI PACIFIC RAILROAD--ABANDONMENT  
EXEMPTION--IN OSAGE, LYON AND MORRIS COUNTIES, KS

Docket No. AB-3 (Sub-No. 115)

MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT--  
IN MIAMI, FRANKLIN, AND OSAGE COUNTIES, KS

Docket No. AB-3 (Sub-No. 121X)

MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT  
EXEMPTION--IN MORRIS AND DICKINSON COUNTIES, KS

Decided: July 21, 1997

In Docket No. AB-3 (Sub-No. 111X), Missouri Pacific Railroad Company (MP) filed a notice of exemption under 49 CFR 1152 Subpart F--*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue service over and abandon a 37.83-mile portion of its Hoisington Subdivision extending between milepost 388.25 near Osage City and milepost 425.0 near Council Grove, in Osage, Lyon, and Morris Counties, KS. A notice of exemption was served and published in the *Federal Register* on December 7, 1993 (58 FR 64412).<sup>1</sup> On October 31, 1994, a decision and notice of interim trail use or abandonment (NITU) was served that reopened the proceeding to implement interim trail use/rail banking under 49 CFR 1152.29 and provided a 180-day period for MP to negotiate an agreement with Rail-to-Trails Conservancy (RTC) for the right-of-way. By decision served May 5, 1995, the NITU negotiation period was extended until October 26, 1995. By decision and notice of interim trail use or abandonment served May 24, 1996, the proceeding was reopened and the NITU served October 31, 1994, was vacated and Seranata Farms School of Equestrian Arts (Seranata) was substituted as the new trail user.

In Docket No. AB-3 (Sub-No. 115), by decision served and published in the *Federal Register* on December 30, 1994 (59 FR 35950), MP was authorized to abandon a portion of a line of railroad known as the Hoisington Subdivision, between milepost 335.5, near Osawatomie, and milepost 388.25, near Osage City, and the Topeka Industrial Lead, between milepost 368.3, near Lomax, and milepost 381.8, near Overbrook, a total of 66.25 miles, in Miami, Franklin, and Osage Counties, KS. On January 30, 1995, a decision and certificate of interim trail use or abandonment (CITU) was served, authorizing a 180-day period for MP to negotiate an interim trail use/rail banking agreement with the Rails-to-Trails Conservancy (RTC) for the right-of-way.<sup>2</sup> By decision served July 27, 1995, the negotiation period was extended to January 25, 1996. By decision and notice of interim trail use or abandonment served May 17, 1996, the proceeding was reopened and the CITU served January 30, 1995, was vacated and Seranata was substituted as the new trail user.

In Docket No. AB-3 (Sub-No. 121X), MP filed a notice under 49 CFR 1152, Subpart F--*Exempt Abandonments* to abandon an approximately 26.57-mile portion of its Hoisington

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<sup>1</sup> The December 7, 1993, decision also imposed an Endangered Species condition under section 7 of the Endangered Species Act, 16 U.S.C. 1536. That condition was removed by decision served November 9, 1994.

<sup>2</sup> The January 30, 1995 decision also contained employee protective conditions, four environmental conditions, and a public use condition. The public use condition expired on July 29, 1995, but the other conditions remain in effect.

Subdivision between the end of the line at milepost 425.0 near Council Grove and milepost 451.57 near Herington, in Morris and Dickinson Counties, KS. A notice of the exemption was served March 2, 1995, and published in the *Federal Register* on March 3, 1995 (60 FR 11995-96). On March 31, 1995, a decision and notice of interim trail use or abandonment (NITU) was served that reopened the proceeding to implement interim trail use/rail banking under 49 CFR 1152.29 and provided for a 180-day period for MP to negotiate an agreement with Rails-to-Trails Conservancy (RTC). Qualified entities other than RTC were also invited to file requests for interim trail use/rail banking.<sup>3</sup> By decision served October 20, 1995, the NITU negotiation period was extended for an additional 180 days, through March 27, 1996. By decision and notice of interim trail use or abandonment served April 22, 1996, the proceeding was reopened and the NITU served March 31, 1995, was vacated, and Seranata was substituted as the new trail user.<sup>4</sup> By decision served October 20, 1995, the negotiation period was extended to March 27, 1996.

On December 18, 1995, MP notified the Board that the entire Hoisington Subdivision, including bridges and ballast, had been conveyed to RTC in accordance with the National Trails System Act, 16 U.S.C. 1247(d). MP stated that the conveyance was effective on December 15, 1995.

By motion filed July 14, 1997, the Kansas Horseman Foundation (KHF) and Seranata request that the Board consolidate the above-captioned proceedings, vacate the existing NITU and issue an appropriate replacement NITU substituting KHF in lieu of Seranata as the interim trail manager pursuant to 49 CFR 1152.29(f), effective on the service date. The parties state that they have entered into an agreement to transfer ownership of and management responsibility for the Hoisington Subdivision, which is now known as the Flint Hills Greenway. MP consents to the transfer.

KHF submitted a statement indicating its willingness to assume full financial responsibility for management of, and liability for payment of taxes for, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service.

KHF and Seranata have complied with the requirements of 49 CFR 1152.29(d)(2)(f) regarding a request to vacate and reissue a NITU.<sup>5</sup> The parties have also indicated that responsibility for the right-of-way is to transfer to KHF as of the date the new NITU is issued. Therefore, these proceedings will be reopened and the NITUs served October 31, 1994, and March 31, 1995, and the CITU served January 30, 1995, will be vacated.

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

*It is ordered:*

1. These proceedings are reopened.
2. The motion to consolidate these proceedings is granted and the proceedings are consolidated.

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<sup>3</sup> A public use condition was also imposed. That condition expired on September 29, 1995.

<sup>4</sup> The March 31, 1995 decision also contained a historic condition requiring MP to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. That condition remains in effect.

<sup>5</sup> KHF and Seranata request consolidation of the proceedings and issuance of an appropriate "order." The requests are being granted. Under the circumstances, rather than continuing any separate references to NITUs and CITUs for these proceedings, a single NITU will be issued.

3. The decisions and notices of interim trail use served October 31, 1994, January 30, 1995, and March 31, 1995, are vacated and KHF is authorized to replace Seranata as the new trail user over the involved right-of-way, effective on the service date of this decision.

4. The exemption of the abandonment of the line described above is subject to the environmental conditions imposed in the January 30, 1995 and March 31, 1995 decisions.

5. 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 the payment of any and all taxes that may be levied or assessed against the right-of-way.

6. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

7. If the new trail user intends to terminal trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specific date.

8. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary