

30143
DO

SERVICE DATE - JUNE 3, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-437 (Sub-No. 2X)

KANSAS SOUTHWESTERN RAILWAY, L.L.C.--ABANDONMENT
EXEMPTION--IN RENO, PRATT AND STAFFORD COUNTIES, KS

Decided: May 27, 1999

Kansas Southwestern Railway, L.L.C. (KSW) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an approximately 64.27-mile line of railroad on the Iuka Branch between milepost 609.97, at Olcott and milepost 630.13 at Iuka, and the portion of its Stafford Branch between milepost 610.0, at Olcott and milepost 654.11 at Radium, in Reno, Pratt and Stafford Counties, KS. Notice of the exemption was served and published in the Federal Register on December 28, 1998 (63 FR 71537-38).

The exemption was scheduled to become effective on January 27, 1999, but a formal expression of intent to file an offer of financial assistance (OFA) to purchase the entire line filed by the Denver Rock Island Railroad (DRI) effectively stayed the effective date of the exemption for 10 days until February 6, 1999.¹ DRI simultaneously requested that KSW provide it with the financial data and information prescribed in 49 CFR 1152.27(a). On January 22, 1999, DRI filed a petition to toll the period for submitting OFAs for an additional two weeks. By decision served January 29, 1999, the time period for DRI to file an OFA was tolled until February 19, 1999, and the effective date of the exemption was further postponed until March 1, 1999.

A timely OFA was filed by DRI. In a decision served February 24, 1999, the exemption was revoked to the extent necessary to permit the financial assistance procedures under 49 U.S.C. 10905 to proceed, and the effective date of the exemption was further postponed pending completion of the financial assistance process. The parties were given until March 22, 1999, to negotiate the terms and conditions of the sale. By letter filed March 23, 1999, DRI informed the Board that the parties have agreed to complete the purchase and sale of the lines outside of the OFA process and, therefore, requested that its OFA be withdrawn. Accordingly, the financial assistance process prescribed in the February 24, 1999 decision will be terminated and the exemption will be permitted to go into effect on the service date of this decision.

The January 29, 1999 decision provided that the request by the Iowa Trails Council (ITC) for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, would be held in abeyance pending completion of the OFA process. By letter filed May 17, 1999, ITC has

¹ See 49 CFR 1152.27(c)(2)(i).

withdrawn its request for a public use condition, but its request for a NITU under the Trails Act remains pending. As indicated in the January 29, 1999 decision, it is appropriate to issue a NITU commencing with the effective date of the exemption. Accordingly, a NITU will be issued.

This decision does 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 financial assistance process in this proceeding is terminated.
3. Upon reconsideration, the notice of exemption published in the Federal Register on December 28, 1998, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the effective date of the exemption (in this case 180 days from the service date of this decision and notice (until November 30, 1999).
4. The decision served on January 29, 1999, is vacated and a Notice of Interim Trail Use or Abandonment under 49 CFR 1152.29(d) is issued authorizing interim trail use/rail banking on the Iuka Branch between milepost 609.97, at Olcott and milepost 630.13 at Iuka, and the portion of KSW's Stafford Branch between milepost 60.0 at Olcott and milepost 654.11 at Radium, in Reno, Pratt and Stafford Counties, KS.
5. If an interim trial 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.
6. 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.
7. If an agreement for interim trail use/rail banking is reached by the 180th day after the service date of this decision (November 30, 1999), interim trail use may be implemented. If no agreement is reached by that time, KSW may fully abandon the line.

STB Docket No. AB-437 (Sub-No. 2X)

8. Subject to the trail use provisions above, KSW's abandonment exemption will become effective on the service date of this decision.

9. This decision is effective on its service date.

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

Vernon A. Williams
Secretary