

28769
DO

SERVICE DATE - JANUARY 9, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-103 (Sub-No. 11X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN HEMPSTEAD, LAFAYETTE AND COLUMBIA COUNTIES, AR

Decided: January 6, 1998

The Kansas City Southern Railway Company (KCS) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 42.78-mile line of railroad between milepost 4.00 at or near Hope, and milepost 46.78 at the Arkansas-Louisiana State Line, in Hempstead, Lafayette and Columbia Counties, AR. Notice of the exemption was served and published in the Federal Register on June 4, 1997 (62 FR 30667). On July 3, 1997, a decision and notice of interim trail use or abandonment (NITU) was served that reopened the proceeding to implement interim trail use/rail banking for the entire line under 49 CFR 1152.29 and the National Trails System Act, 16 U.S.C. 1247(d), and provided for a 180-day period for KCS to negotiate an agreement with the National Salvage & Service Corp. (NS&S).¹ The negotiation period under the NITU expired on December 31, 1997.

By petition filed on December 24, 1997, the Director of Parks, Recreation and Tourism for the City of Hope, AR (HPRT), a new negotiation party, filed a request for a NITU for the entire line.² HPRT submitted a statement indicating its willingness to assume full financial responsibility for management of, for any legal liability arising out of the transfer or use of the right-of-way (unless user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of taxes for, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that use of the right-of-way for trail purposes is subject to future reactivation for rail service. Also on December 24, 1997, KCS indicated its willingness to negotiate with HPRT for trail use/rail banking of the line.

¹ The July 3 decision also imposed a National Geodetic Survey (NGS) condition requiring KCS to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying the 78 geodetic markers identified by NGS that might be affected by the abandonment. That condition remains in effect.

² HPRT states that NS&S and KCS agree to the issuance of a new NITU between HPRT and KCS. By letter filed on December 24, 1997, NS&S acknowledged that it supports the issuance of a new NITU that would be concurrent to the existing NITU between itself and KCS. NS&S also asserts that a new NITU will be subject to its contractual salvage rights to the track, track materials, ballast and non bridge ties.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way³ and the carrier is willing to enter into negotiations. Inasmuch as KCS has not consummated the abandonment and is willing to negotiate with HPRT for trail use over the right-of-way, a NITU will be issued, with the trail use negotiation period running for 180 days from the service date of this decision, or until July 8, 1998. If no agreement is reached within that time period, KCS may fully abandon the line. Use of the right of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This decision 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. Upon reconsideration, the notice of exemption published in the Federal Register on June 4, 1997, 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 until July 8, 1998.
3. If an interim trail 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.
4. 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.
5. 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.
6. If any agreement for interim trail use/rail banking is reached by July 8, 1998, interim trail use may be implemented. If no agreement is reached by that time, KCS may fully abandon the line.
7. This decision is effective on its service date.

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

³ See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--In Pettis and Henry Counties, MO, Docket No AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

STB Docket No. AB-103 (Sub-No. 11X)

Vernon A. Williams
Secretary