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SERVICE DATE – JULY 19, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 364 (Sub-No. 16X)

MID-MICHIGAN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN MUSKEGON COUNTY, MICH.

Decided: July 18, 2011

This decision grants an extension of time to negotiate a trail use/rail banking agreement in this proceeding.

Mid-Michigan Railroad, Inc. (MMRR) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 3.35-mile line of railroad between milepost 191.40 and milepost 194.75, at the end of the line, in Muskegon County, Mich. Notice of the exemption was served and published in the Federal Register on April 20, 2009 (74 Fed. Reg. 18,020-21).

By decision and notice of interim trail use or abandonment (NITU) served on May 19, 2009, a 180-day period was authorized for the Michigan Department of Natural Resources (MI DNR) to negotiate an interim trail use/rail banking agreement with MMRR for a 0.5-mile portion of the right-of-way between milepost 191.40 and milepost 191.90, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). A second NITU, also on behalf of MI DNR, was issued by decision served on July 12, 2010, for the remaining 2.85-mile segment of the right-of-way between milepost 191.90 and milepost 194.75, and the NITU negotiating periods for both segments were set to expire on November 10, 2010. By decision served on November 23, 2010, the NITU negotiating periods were extended to May 9, 2011.

By letter filed on July 14, 2011, MI DNR requests an extension of the NITU negotiating periods for an additional 180 days. MI DNR states that MI DNR and MMRR are continuing negotiations toward an agreement and expect to complete an agreement within 180 days. On the same date, MMRR filed a response, concurring with the extension for an additional 180 days.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended. An extension of the NITU negotiating periods for both segments will promote the establishment of trail use and rail banking consistent with the Trails Act. Under the circumstances, further extension of the negotiating periods is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU

negotiating periods will be extended for an additional 180 days from May 9, 2011, until November 5, 2011.¹

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

It is ordered:

1. MI DNR's request to extend the NITU negotiating periods is granted.
2. The NITU negotiating periods are extended to November 5, 2011.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

¹ On July 8, 2011, the deadline for MMRR to consummate the abandonment, MMRR filed a request to extend that deadline for 90 days. However, because the NITU negotiating periods that are being extended in this decision are a regulatory barrier to consummation, under the Board's regulations the consummation deadline is automatically extended until 60 days after the satisfaction, expiration, or removal of that condition. See 49 C.F.R. § 1152.29(e)(2). Thus, if no agreement has been reached upon expiration of the NITU negotiating periods on November 5, 2011, MMRR would have 60 days, until January 4, 2012, to file its notice of consummation.