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SERVICE DATE – NOVEMBER 9, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-364 (Sub-No. 14X)

MID-MICHIGAN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN KENT, IONIA,  
AND MONTCALM COUNTIES, MI

Decided: November 6, 2009

By decision and notice of interim trail use or abandonment (NITU) served on June 9, 2008, Mid-Michigan Railroad, Inc. (MMRR) was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 24.70-mile rail line between milepost 103.20 at Lowell, MI, and milepost 78.50, at Greenville, MI, at the end of the line in Kent, Ionia, and Montcalm Counties, MI.<sup>1</sup> Also, a 180-day period was authorized for West Michigan Trails and Greenways Coalition (WMTGC) to negotiate an interim trail use/rail banking agreement with MMRR for a portion of the right-of-way between milepost 103.20 near Lowell and milepost 81.32 near Greenville, a distance of 21.88 miles. That negotiating period expired on December 8, 2008.

On December 23, 2008, a NITU was served reopening the proceeding and establishing a 180-day period for a new entity, the Fred Meijer Heartland Trail (FFMHT), to negotiate an interim trail use/rail banking agreement with MMRR for the 21.88-mile portion of the right-of-way between milepost 103.20 near Lowell and milepost 81.32 near Greenville. That negotiating period was scheduled to expire on June 21, 2009. By decision served on June 18, 2009, the NITU negotiating period for the 21.88-mile portion of the right-of-way was extended until March 31, 2010.<sup>2</sup>

On April 28, 2009, a NITU was served reopening the proceeding and establishing a 180-day period for FFMHT to negotiate an interim trail use/rail banking agreement with MMRR for the remaining 2.82 miles of right-of-way between milepost 81.32 at Washington Street (M-57) in Greenville and milepost 78.50 near Greenville at the end of the line (Peck Road). That negotiating period was scheduled to expire on October 25, 2009.

By letter filed on October 20, 2009, FFMHT filed a request to extend the negotiating period for the 2.82-mile portion of the right-of-way until March 31, 2010. FFMHT states that it

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<sup>1</sup> The exemption was also subject to historic preservation and standard employee protective conditions. The historic preservation condition was removed by decision served on September 22, 2008.

<sup>2</sup> Also, in the June 18 decision, the time to consummate the abandonment and file a notice of consummation was extended until May 30, 2010.

is working to finalize funding for acquisition of the right-of-way, but does not expect to have all of the funding available to close the transaction until March 31, 2010. In a response filed on October 21, 2009, MMRR states that it agrees to the extension request. Also, MMRR requests an extension of the time to file its notice of consummation until May 30, 2010.

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an 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 trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d).<sup>3</sup>

Accordingly, the NITU negotiating period will be extended until March 31, 2010, and the time to consummate the abandonment and file a notice of consummation will be extended until May 30, 2010.

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

It is ordered:

1. The request to extend the interim trail use negotiating period is granted.
2. The request to extend the time to consummate the abandonment and file a notice of consummation is granted.
3. The negotiating period under the NITU is extended to March 31, 2010.
4. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before May 30, 2010.
5. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary

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<sup>3</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).